MT LEGISLATIVE HISTORY

Chapter 264 1963

Bill (H) 282 S _____ Original bill & hist. ___C

H. Committee on Business & Industry

Hearing Date(s) Feb 06 ✓C

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Date Out Feb 06 ✓C

S. Committee on Judiciary

Hearing Date(s) Feb 26 ✓C

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Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

BUSINESS & INDUSTRY

Business & Industry met on adjournment February 6, 1963. Chairman called the meeting to order. There were 10 members present.

This meeting was held with the Judiciary Committee of the Senate with regard to HOUSE BILL 282. Mr. Dykstra informed committee members that Dean Sullivan of the Montana State University Law School has prepared memorandum for the committee members to refer to during the discussion of this measure on the floor of the House.

DEAN SULLIVAN I am one of three members on the Commission of Uniform Laws for Montana, authorized in 1945 by the legislature and required to report to the legislature their feelings regarding proposed legislation. Main purpose is to promote uniformity in laws of Montana. The Uniform Commercial Code was before this committee in the 1961 session, but due to the lateness in presenting it and the length of bill, this measure died in committee.

Bill was conceived in 1942, got under way in 1945, and the next 7 or 8 years involved thorough study and effort by over 1,200 of the best legal minds in the U. S.. This bill was initially passed in Pennsylvania. Has been adopted by 18 states. States neighboring Montana are: Wyoming, Oregon and New Mexico. Will be introduced this year in about 24 states in U.S. New York spent about five years studying this measure, spent about $250,000 and submitted a 2,000 page report on the findings and proposed amendments. Certain changes have been made in the measure since that report.

Montana State University School of Law faculty has spent about 2,000 man hours working on this bill. We bring this bill before this committee in the hopes that you will not make any changes, not even a single comma.

PROFESSOR DAVID MASON, Law School, Montana State University Discussed commercial papers and letters of credit. These are fields where uniformity is badly needed. In dealing with commercial transactions you need uniformity. You may ask what is the status in the laws of the State of Montana regarding the sales of chattels. This state never did adopt the Uniform Sales Act. This Act was adopted by 36 states. There is no question that this state is in need for legislation dealing with sales of chattels. We could adopt the Uniform Sales Act but that would be ridiculous. About one half of the states who adopted the Unifform Sales Act are now abandoning this Act.

Commercial Papers. The N.I.L. was adopted in 1903 and is highly inadequate to handle the changes made in past years. Uniform Commercial Code, article 4 deals with the problems involved in handling collections, etc. Montana is becoming a commercial state more and more and uniformity in laws is badly needed.

WESLEY WERTZ, Attorney at Law, Helena, Montana. Mr. Wertz wrote an article for the Montana Law Review on bank collections and bank papers. Commercial Codes were needed approximately 3 years ago. In U. S. the number of transactions involving banks has increased in the last few years. At present time there are between 25,000,000 and 50,000,000 transactions cleared through the banks in the U. S. Throughout the U. S. banks and bankers associations have studied the Uniform Commercial Codes. In 1960 the Montana Bankers Association passed a resolution recommending the adoption of the Codes. All that is needed is to make uniform practices that presently exist.

EDWIN BRIGGS, Law School, Montana State University Discussed Investments, Article 8 of the Codes. New York report criticized Article 8 so many changes were made in this Article. Has the benefit of a tremendous amount of study and workmanship on this particular problem of making investment securities completely negotiable. Forerunner of Article 8 of the Code was the Uniform Stock Transfer Act, approved many years ago. Codes do succeed in providing for effective negotiability and deals with various problems with the regulation of transfers. One of special problems is dealing with and providing for the rules of the regulation of transfers and registering of securities.

PROFESSOR ALFRED STONE, Law School, Montana State University. Discussed secured transactions. Deals with borrowing of money with a security and a promise to pay. Article 9 deals with secured transactions. Considerable work has been done on this article. Have thoroughly examined this bill and it is our belief that it should pass to update Montana laws. Effective date of law June 30, 1964.

Gentlemen retired from the meeting. Mr. Alex Blewett, Representative, Cascade County attended this committee meeting.

Motion made by Tooke, seconded by Regan, that HouseBill 282 DO PASS. Motion carried.

Chairman Dykstra informed the committee that he would look into the problem of having the bill printed, etc.

The meeting was then adjourned.

DAN DYKSTRA, CHAIRMAN..

MASSACHUSETTS' EXPERIENCE
Under The
UNIFORM COMMERCIAL CODE

By

Walter D. Malcolm

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
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MASSACHUSETTS' EXPERIENCE UNDER THE UNIFORM COMMERCIAL CODE

By Walter D. Malcolm

Boston Attorney and a Massachusetts Commissioner on Uniform State Laws

In Massachusetts, the Code was enacted in September, 1957 and became effective on October 1, 1958.

Following the precedent established by Pennsylvania, Massachusetts lawyers, bankers and business men prepared carefully for the Code during the period between enactment and the effective date. This preparation involved cooperation with the publishers of the Annotated Laws of Massachusetts in the publication in a single volume of the text of the Code as finally enacted, the Official Comments of the Sponsoring Organizations, the final form of the Massachusetts Annotations, amendments of related statutes and certain explanatory material; scheduling and holding of two three-day legal clinics and numerous shorter seminars, lectures and discussions to explain the Code; the completion and publishing by a Bankers Code Committee and a Bank Lawyers Code Committee of a 250-page "Bankers Manual on the Uniform Commercial Code" (which is available for use not only in Massachusetts but in other states considering or enacting the Code); and cooperation with the Office of the Secretary of State of Massachusetts and with the city and town clerks of Massachusetts in the setting up of efficient filing systems for receipt of filings under Article 9 of the Code.

The investigation and studies of the Bankers Code Committee and the Bank Lawyers Code Committee resulted in the conclusion that, exclusive of financing statements and other filing forms, not more than one or two forms customarily used by banks had to be revised prior to the effective date, although banks and other establishments were free to modify as many forms as they desired. Prior to the effective date, what few mandatory new forms

were required by the Code were available and, as in the case of Pennsylvania, arrangements were effected whereby filings could be made with the Secretary of State's Office and the city and town clerks' offices in advance of October 1, 1958 to become effective at the opening of business on October 1, 1958. This was simply a convenient and cooperative arrangement made to avoid an unusual and abnormal rush at the filing offices at the opening of business on the effective date.

By reason of these steps and careful preparation, the effective date of October 1, 1958 came and went with a minimum of confusion and trouble. Within a period of two weeks the Office of the Secretary of State was completely current in its filings including the very heavy volume of original filings made in advance of and concurrently with the effective date. Banks, finance companies, city and town clerks and affected industries similarly moved into operation under the Code without any difficulty. Within a matter of weeks and certainly before the end of 1958 the business community and filing offices in Massachusetts had settled down to operations under the Code as though the Code had been the effective law for many years.

At a somewhat more leisurely pace and through 1959 banks and other industries affected by the Code gradually made further revisions in their forms to adapt them more closely to the Code and take advantage of provisions in the Code. The larger banks in Boston worked out new forms of security agreements adapted more closely to provisions of the Code, developed a form of interbank agreement in cases where two or more banks were financing the same borrower on similar types of security and deleted from deposit tickets and interbank collection forms lengthy deposit and collection legends because these were no longer necessary under Article 4 of the Code.

In the Fall of 1958, lawyers specializing in mortgage indentures were somewhat concerned about the potential of mortgage trustees operating mortgage properties under the

provisions of the Code, but this concern was removed by the enactment in 1959 of the 1958 Amendments approved by the Sponsoring Organizations. By December, 1959 the registers of deeds decided they wanted some adjustment of Code provisions applicable to filings in registries of deeds with respect to fixtures. At the time of preparation of this report representatives of the register of deeds, of the conveyancing bar and the Massachusetts Commissioners on Uniform State Laws have substantially reached agreement on a few special provisions to meet the requirements of the registers of deeds. In both 1959 and 1960, a single lawyer in one of the smaller communities of Massachusetts caused to be filed bills looking toward the repeal or further study of Article 9 of the Code but in neither year found any support whatsoever in the business community or legislature for his particular views.

Except for these relatively minor problems and adjustments, no crisis of any kind has developed under the Code in Massachusetts and, having in mind its great size, scope and importance, there is no question whatsoever but that the Code has worked well since it has been in operation. Members of the bar and affected industries throughout the state and in all lines of activities have made what adjustments were required to be made in a relatively easy and leisurely manner without upheaval, unusual stress or (to date) litigation. That these adjustments were significant is evidenced by the fact that by March, 1960 or eighteen months after the effective date there have been no less than 55,000 filings in the Secretary of State's Office under Article 9. During the same period no litigation involving a controlling provision of the Code has reached the stage of any published report although in sixteen decisions of the Massachusetts Supreme Judicial Court and of Federal Courts in Massachusetts the Code has been cited and referred to by way of cross reference in cases involving facts not controlled by the Code.

Since October 1, 1958 inquiries have been directed by persons outside of Massachusetts to various officials and organizations in Massachusetts with respect to operations under the Code and since October 1, 1959 (after the Code had been in operation for more than a year) the Massachusetts Commissioners have made some further inquiries as to experience of different types of organizations under the Code. Quotations from letters written in reply to these various inquiries follow.

In June, 1959 at a time when the Legislature of Ohio was actively considering the Code, the Honorable Joseph B. Ward, Secretary of the Commonwealth of Massachusetts, wrote to His Excellency Michael V. DiSalle, Governor of Ohio:

> "I am informed that the Legislature of Ohio is presently considering the enactment of the Uniform Commercial Code. * * *
>
> For such interest as it may be to you, I am glad to report that in Massachusetts enactment of the Code was supported by substantially all segments of the community that would be affected by it. These included the deans and many members of the faculty of leading law schools, the Massachusetts and Boston Bar Association, the Massachusetts Federation of Labor and the Congress of Industrial Organization (CIO), the Massachusetts Bankers Association, the Greater Boston Chamber of Commerce, the Associated Industries of Massachusetts and numerous other individuals and organizations. Where only Pennsylvania had enacted the Code prior to Massachusetts, there were some persons in Massachusetts who urged that enactment be postponed until it had been tested further, but these views were not adopted and the Code (in its revised form) was enacted in Massachusetts in September 1957 and has been effective since October 1, 1958. Consequently the Code has been in actual operation in Massachusetts now eight months.

I am happy to report to you that all indications are the Code is working extremely well in Massachusetts. The changeover to the Code on the effective date of October 1, 1958, was accomplished with surprising ease and with a minimum of disturbance to business or the public. Since then, there has been no substantial litigation involving the Code, a minimum of complaints about it, and, in fact, very little discussion of it. However, both before and after the effective date our Supreme Judicial Court and the United States District Court in this district have in several cases cited rules of the Code to answer questions arising in cases before these Courts and I am informed that in business transactions the Code is satisfactorily providing the basic comercial law that it was expected to provide. The office of the Secretary of State has now received over 32,000 filings and fees totaling $92,865, for the eight-month period under Article 9 of the Code. Consequently, this very important function of giving public notice of secured transactions is operating efficiently and effectively and providing a modest income from fees in excess of all expenses and cost of equipment.

Due in large part to the very favorable reaction to the Code in Massachusetts, our sister state of Connecticut enacted the Code without a dissenting vote about a month ago * * *.

Massachusetts would indeed be pleased if the important state of Ohio would also join in approving this very carefully prepared and forward looking legislation."

Mr. C. Kenneth Jackson, Vice President of the Merchants National Bank of Boston, in reply to an inquiry from the writer said the following with respect to the consumer credit department activities of his bank involving individual consumer installment lending, financing of automobile and

equipment dealers and the financing of fleet and equipment leases:

"Although one must always be cautious in making broad statements, since there could be pit-falls or problems not yet encountered, I can say without reservation that we have encountered no difficulties or serious problems in our one year of operation under provisions of Article 9 of the Code. Even beyond that, our reaction has been that the Code machinery with respect to notice through the filing of financing statements has worked extremely well in practical operation. I know that our attorney has pointed out to you personally one or two practical examples or applications of this reaction, and I shall not burden this letter with the details. Suffice it to say that, although we experienced the misgivings common to all who are obliged to face the unfamiliar and who therefore incline to cling to the familiar, I and my associates are pleased to be quoted to the effect that in our judgment much has been gained and nothing that we can see lost in consequence of the Uniform Commercial Code having replaced in Massachusetts the rather conglomerate law as to secured transactions that preceded it.

In quite a few instances we still encounter problems of the conflict of laws which necessitate special arrangements to meet the legal requirements of other jurisdictions, and which defeat in varying degrees in those instances standardization of forms and procedures. I feel very strongly that the full advantages of the Code will be realized only when it becomes law broadly throughout the fifty states."

Mr. James C. Gray, Vice President of the Worcester County National Bank of Worcester, Massachusetts, and the officer in charge of the Time Sales Finance Department of that bank wrote:

"It has been requested that I present to you the candid opinion of this bank of the Uniform Commercial Code after a year's operating experience.

This Instalment Loan Department operates presently through 13 branches covering Worcester County and represents the largest single instalment credit function of its kind in the area. Although we have not been forced to litigate under the Code, it is our feeling that we now have greater protection under a much more suitable filing procedure than we had heretofore. We have not encountered any problems of a serious nature, but for the first time it is felt by those of us who operate the Instalment Loan Department that we all have a co non understanding of the rules governing our affairs, and to me this is very important.

It would seem to me that the full potential of the Uniform Commercial Code will only be realized when all states have it in force."

David J. Seder, President of General Discount Corporation wrote:

"We are engaged in the general commercial finance business. Our primary activities involve the financing of accounts receivable, inventory and income producing equipment.

As you know, in view of the comparatively advanced state of pre-Code Massachusetts law in this field, we were somewhat lukewarm toward the Code when it was proposed. After more than a year's experience operating under the Code, we are satisfied that there has been a marked improvement over pre-Code days. Functionally meaningless obstacles which, in many deserving cases, either prevented or made effective commercial financing unduly cumbersome for all concerned, have been eliminated. Based on our experience, we feel that the Code has been significantly

helpful for both borrower and lender by permitting credit to be made available through techniques more efficiently adapted to accepted current business needs and practices."

In December, 1958, Mr. M. C. Peabody, President of the Farm Credit Bank of Springfield, Springfield, Massachusetts, in response to a request as to the experience of his bank under the Code wrote to one of the Commissioners on Uniform State Laws in New Hampshire as follows:

"We are writing to you in your capacity as Commissioner of Uniform State Laws because we understand that the Uniform Commercial Code is likely to be co· idered at the 1959 session of the New Hampshire Legislature. We are particularly interested in Article 9—Secured Transactions.

One of our institutions, the Federal Intermediate Credit Bank of Springfield, discounts the notes taken by the production credit associations in the State of New Hampshire for the loans which they make to farmers. Another, Springfield Bank for Cooperatives, makes loans to agricultural cooperative associations in the State of New Hampshire.

Article 9 contains provisions which we consider helpful in making loans both to individual farmers and to agricultural cooperative associations. In our opinion the enactment of the Uniform Commercial Code, particularly Article 9 in substantially the form adopted in Massachusetts, would be beneficial to the farmers in New Hampshire who have to obtain credit.

We also think that uniformity in the laws relating to personal property security in all the states of the Northeast would result in benefit to the farmers by making it possible for their Farm Credit organizations to operate more efficiently."

In November, 1959, in response to an inquiry from an attorney in Oklahoma, William M. Silverman, Esq., a practicing attorney in Boston, former president of the Commercial Law League and an attorney of wide experience in commercial and bankruptcy matters, wrote as follows:

> "When the Code was first considered in Massachusetts, I discussed certain provisions, particularly Article 9, 'Secured Transactions', with the proponents of the Code since I had certain reservations with reference to the language contained therein. After a full consideration of this matter, I was satisfied that the adoption of the Code in Massachusetts was proper, and that the operation of the Law Commerce under its provisions w(d be beneficial to all parties concerned. There appeared to be every indication that the operation of the Code in Pennsylvania for a period of time prior to its adoption in Massachusetts was proven by those engaged in the commercial practice. During the short period of time which we have operated under the Code in Massachusetts, there has appeared no undue detriment to unsecured creditors. If, of course, later decisions of the Courts create what appear to be inequities, we shall attempt to cure them by conference and amendment. No substantial piece of legislation, as represented by the Code can be entirely perfect, nor is it possible at the outset, to foresee the various interpretations which may be put upon various provisions by the Courts, who will be called upon to consider them.
>
> If I am called upon to give a definitive and categorical answer to your question, my answer is that Oklahoma adopt the Uniform Commercial Code. If there is any further information I can give you, I am entirely at your service."

In November, 1959 Mr. Lucius F. Foster, Executive Director of the Massachusetts Warehousemen's Association

in response to an inquiry from the writer with respect to warehousemen's experience under the Code, wrote:

> "Confirming our recent conversation about the Uniform Commercial Code, none of our members has experienced any problem with the provisions of Article 7, so far as I know.
>
> Of course, it is possible that some minor difficulties may have arisen but I feel sure that anything of a substantive nature would come to my attention."

Mr. R. A. McIntire, Assistant Vice President of Old Colony Trust Company, Boston, which has the largest corporate trust and transfer department in New England, had this to say regarding Article 8 of the Code:

> "You have asked me to express an opinion on our experiences under the Massachusetts Uniform Commercial Code since its adoption by our Commonwealth.
>
> As transfer agent for numerous corporations we had already experienced some liberalization from documentation requirements as a result of our old statute, section 21 of Chapter 203 of the General Laws of Massachusetts. We have found however as a result of the passage of the new code a greater freedom from documentation on transfer of Massachusetts corporations where the signatures were guaranteed by Massachusetts guarantors acceptable to us.
>
> To illustrate, we are now accepting, in most cases, in contrast to our past practice, transfers without supporting papers or documentation where the securities were registered in the names of corporations, associations, charities, etc., decedents, incompetents, minors and fiduciaries.
>
> What this has meant to us is a saving in clerical and officers' time, but of more importance perhaps to

brokers and the trade as a whole is that this freedom of documentation has enabled us to expedite transfers. Thus the presentor obviously gains benefit from this shorter transfer period either as a result of sales or deliveries of the new securities to the beneficiaries or others. Last, we believe that this has saved lawyers and the other presentors the necessity of obtaining voluminous and numerous copies of documents which would have been required prior to the code, and which saving undoubtedly will be passed along to their clients and customers."

Mr. A. B. Tyler, Vice President and Counsel of The National Shawmut Bank of Boston, writing in December 1959, said:

"Now that the Uniform Commercial Code has been in operation here in Massachusetts for well over a year, I believe you will be interested in Shawmut's appraisal of this extensive codification of the law relating to commercial transactions, based on our experience to date.

"* * * we reviewed with our General Counsel, Gaston Snow Motley & Holt, all of our bank forms to determine what changes must be made prior to the effective date of the Code. We were pleased, and somewhat surprised, to find that the mandatory changes were few in number and we were, therefore, able to make all necessary revisions in our forms and operating procedures in advance of the dead line of October 1, 1958.

Since then our experiences in functioning under the Code have been quite satisfactory on the whole and we feel that it represents a very important improvement in the commercial law of Massachusetts, particularly as applied to secured transactions under Article 9.

> The adoption of the Code in other states, particularly throughout New England, should eliminate or alleviate many of the problems which now confront us from time to time in transactions not limited to Massachusetts law, and we look forward hopefully to the time when the Code shall become in fact 'Uniform'."

In March, 1959 in response to an inquiry from the Connecticut Chamber of Commerce with respect to Massachusetts' experience with the Code, Mr. William J. Bird, Executive Vice President of the Greater Boston Chamber of Commerce replied:

> "We are pleased to answer your inquiry regarding our experience with the Uniform Commercial Code which became effective on October 1, 1958.
>
> The short answer to your inquiry is that it has exceeded our expectations. To date we have heard nothing but commendation and not one word of complaint or criticism. While a period of 5½ months may be too brief in which to form a final judgment, the fact that a law of such wide impact has been accepted so easily is of considerable significance.
>
> We supported and worked hard for adoption of the Code because we believed that it would be a constructive improvement in the law governing commercial transactions. We have every reason to believe that it has fulfilled that objective.
>
> We look forward to other states joining with Massachusetts in adopting the Code. It would be mutually advantageous."

In short, the Massachusetts' experience leads one to the same conclusion as that almost universally acclaimed in Pennsylvania. The Code works and it works well.

February 6, 1963.

MR. SPEAKER:

We, your Committee on BUSINESS & INDUSTRY having had under consideration HOUSE BILL NO. 282:

A BILL FOR AN ACT ENTITLED: "AN ACT TO BE KNOWN AS THE UNIFORM COMMERCIAL CODE, REVISING THE LAW RELATING TO CERTAIN COMMERCIAL TRANSACTIONS IN OR REGARDING PERSONAL PROPERTY AND CONTRACTS AND OTHER DOCUMENTS CONCERNING THEM, INCLUDING SALES, COMMERCIAL PAPER, BANK DEPOSITS AND COLLECTIONS, LETTERS OF CREDIT, BULK TRANSFERS, WAREHOUSE RECEIPTS, BILLS OF LADING, OTHER DOCUMENTS OF TITLE, INVESTMENT SECURITIES, AND SECURED TRANSACTIONS, INCLUDING CERTAIN SALES OF ACCOUNTS, CHATTEL PAPER, AND CONTRACT RIGHT S; PROVIDING FOR PUBLIC NOTICE TO THIRD PARTIES IN CERTAIN CIRCUMSTANCES; PROVIDING FOR FILING FEES IN CERTAIN CIRCUMSTANCES; REGULATING REMEDIES, PROCEDURE, EVIDENCE AND DAMAGES IN CERTAIN COURT ACTIONS INVOLVING SUCH TRANSACTIONS, CONTRACTS OR DOCUMENTS; TO MAKE UNIFORM THE LAW WITH RESPECT THERETO; AMENDING SECTIONS 3-226, 5-803, 5-1001, 5-1114, 8-709, 11-2404, 11-3714, 11-3721, 11-3910(b), 13-606, 16-2905, 16-2922, 16-2923, 19-103, 25-231, 32-1905(2), 45-109, 45-112, 45-116, 45-301, 45-308, 45-704, 45-707, 45-709, 45-911, 45-1106, 45-1107, 45-1410, 47-124, 52-114, 52-116, 52-212, 52-312, 52-313, 52-314, 52-319 THROUGH 52-323, 53-110, 66-202, 67-1301, 72-211, 72-224, 74-608, 79-1905, 88-152, 88-154, 89-109(2), 93-2802, 93-3403, 93-4301, 93-4302, 93-4307(4), 93-4338, 93-4344, 93-4346, 93-5811, 93-6001, 93-6004, 93-8613, 93-401-22, AND 93-1401-7 OF THE REVISED CODES OF MONTANA, 1947; REPEALING SECTIONS 5-1007, 5-1008, 5-1016, 5-1017, 5-1043, 5-1047 THROUGH 5-1049, 8-501 THROUGH 8-507, 8-816 THROUGH 8-818, 14-523, 15-603, 15-605, 15-628 THROUGH 15-651, 16-2921, 17-308 THROUGH 17-314, 17-601, 17-602, 18-201 THROUGH 18-205, 30-601 THROUGH 30-609, 45-106, 45-1104, 45-1301 THROUGH 45-1305, 52-301 THROUGH 52-311, 52-315 THROUGH 52-317, 55-101 THROUGH 55-1601, 56-107, 65-104, 65-107, 65-115 THROUGH 65-124, 65-201 THROUGH 65-219, 67-1702 THROUGH 67-1704, 72-303, 72-305 THROUGH 72-307, 74-201, 74-202, 74-204 THROUGH 74-207, 74-321, 74-401 THROUGH 74-403, 74-502, 86-705, 86-706, 88-101 THROUGH 88-149, 88-156 THROUGH 88-160, AND 93-4339 OF THE REVISED CODES OF MONTANA, 1947, AND ALL OTHER LEGISLATION INCONSISTENT HEREWITH; AND PROVIDING AN EFFECTIVE DATE."

REPSECTFULLY REPORT AS FOLLOWS: That HOUSE BILL NO. 282

DO PASS.

DAN McGINNIS, CHAIRMAN.

JUDICIARY COMMITTEE MEETING
February 26, 1963

The meeting was called to order by the Chairman. All members were present, except Senators Cumming, McGowan, McElwain and McDonnell who were excused.

Senator Schoonover made a motion and was seconded by Senator Huntley that the committee recommend that Substitute House Bill 42 be concurred in. The motion was carried.

Senator Huntley made a motion and was seconded by Senator Gerard that the committee recommend that House Bill 384 be not concurred in. The motion was carried.

Senator Huntley made a motion and was seconded by Senator Dussault that the committee recommend that House Bill 387 be not concurred in. The motion was carried.

Senator Schoonover made a motion and was seconded by Senator Dussault that the committee recommend that House Bill 386 be not concurred in. The motion was carried.

Senator Schoonover made a motion and was seconded by Senator Dussault that House Bill 133 be recommended by the committee to be concurred in. The motion was carried.

Senator Huntley made a motion and was seconded by Senator Dussault that the committee recommend that House Bill 282 be concurred in. The motion was carried.

The meeting was adjourned.

Respectfully submitted,

Chairman

Patricia Dorrington, Secretary

Which May Be Made by Federal Savings and Loan Associations Having Domicile in the State of Montana.

Be it enacted by the Legislative Assembly of the State of Montana:

Authority granted building and loan associations to make additional real estate loans.

Section 1. **Loans and Investments.** Building and loan associations and savings and loan associations organized, and operating under the laws of the state of Montana, and insured by the federal savings and loan insurance corporation, may, in addition to any loan or investment now permitted, make any real estate loan upon terms and conditions set by the state superintendent of banks but not to exceed the authority to make real estate loans granted to savings and loan associations chartered by the United States, and domiciled in Montana, the provisions of any laws of this state to the contrary notwithstanding. The additional real estate loans hereby authorized may be made on the same terms and conditions and subject to the same limitations as shall from time to time be permitted by acts of Congress of the United States or of the federal home loan bank board to federally chartered savings and loan associations domiciled in this state.

Terms and conditions.

Approved March 13, 1963.

CHAPTER 264

An Act to Be Known as the Uniform Commercial Code, Revising the law relating to Certain Commercial Transactions in or Regarding Personal Property and Contracts and Other Documents Concerning Them, Including Sales, Commercial Paper, Bank Deposits and Collections, Letters of Credit, Bulk Transfers, Warehouse Receipts, Bills of Lading, Other Documents of Title, Investment Securities, and Secured Transactions, Including Certain Sales of Accounts, Chattel Paper, and Contract Rights; Providing for Public Notice to Third Parties in Certain Circumstances; Providing for Filing Fees in Certain Circumstances; Regulating Remedies, Procedure, Evidence and Damages in Certain Court Actions Involving Such Transactions, Contracts or Documents; to Make Uniform the Law With Respect Thereto; Amending Sections 3-226, 5-803, 5-1001, 5-1114,

8-709, 11-2404, 11-3714, 11-3721, 11-3910(b), 13-606, 16-2905, 16-2922, 16-2923, 19-103, 25-231, 32-1905 (2), 45-109, 45-112, 45-116, 45-301, 45-308, 45-704, 45-707, 45-809, 45-911, 45-1106, 45-1107, 45-1410, 47-124, 52-114, 52-116, 52-212, 52-312, 52-313, 52-314, 52-319 Through 52-323, 53-110, 66-202, 67-1301, 72-211, 72-224, 74-608, 79-1905, 88-152, 88-154, 89-109(2), 93-2802, 93-3403, 93-4301, 93-4302, 93-4307(4), 93-4338, 93-4344, 93-4346, 93-5811, 93-6001, 93-6004, 93-8613, 93-401-22, and 93-1401-7 of the Revised Codes of Montana, 1947; Repealing Sections 5-1007, 5-1008, 5-1016, 5-1017, 5-1043, 5-1047 Through 5-1049, 8-501 Through 8-507, 8-816 Through 8-818, 14-523, 15-603, 15-605, 15-628 Through 15-651, 16-2921, 17-308 Through 17-314, 17-601, 17-602, 18-201 Through 18-205, 30-601 Through 30-609, 45-106, 45-1104, 45-1301 Through 45-1305, 52-301 Through 52-311, 52-315 Through 52-317, 55-101 Through 55-1801, 56-107, 65-104, 65-107, 65-115 Through 65-126, 65-201 Through 65-219, 67-1702 Through 67-1704, 72-303, 72-305 Through 72-307, 74-201, 74-202, 74-204 Through 74-207, 74-321, 74-401 Through 74-403, 74-502, 86-705, 86-706, 88-101 Through 88-149, 88-156 Through 88-160, and 93-4339 of the Revised Codes of Montana, 1947, and All Other Legislation Inconsistent Herewith; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

ARTICLE 1
GENERAL PROVISIONS

Part 1

Short Title, Construction, Application and Subject Matter of the Act

Title—Uniform Commercial Code.

Section 1-101. **Short Title.** This Act shall be known and may be cited as Uniform Commercial Code.

Liberal construction.

Section 1-102. **Purposes; Rules of Construction; Variation by Agreement.**

(1) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this Act are:

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

Variation by agreement.

(3) The effect of provisions of this Act may be varied by agreement, except as otherwise provided in this Act and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Act may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

Import of words.

(4) The presence in certain provisions of this Act of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this Act unless the context otherwise requires:

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

Application of general law.

Section 1-103. **Supplementary General Principles of Law Applicable.** Unless displaced by the particular provisions of this Act, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

Construction against implicit repeal.

Section 1-104. **Construction Against Implicit Repeal.** This Act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Section 1-105. **Territorial Application of the Act; Parties' Power to Choose Applicable Law.**

Application.

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Act applies to transactions bearing an appropriate relation to this state.

Effect of contrary agreement.

(2) Where one of the following provisions of this Act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2-402.

Applicability of the Article on Bank Deposits and Collections. Section 4-102.

Bulk transfers subject to the Article on Bulk Transfers. Section 6-102.

Applicability of the Article on Investment Securities. Section 8-106.

Policy and scope of the Article on Secured Transactions. Sections 9-102 and 9-103.

Section 1-106. **Remedies to Be Liberally Administered.**

Liberal administration of remedies.

(1) The remedies provided by this Act shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this Act or by other rule of law.

Enforcement

(2) Any right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

Waiver or renunciation.

Section 1-107. **Waiver or Renunciation of Claim or Right After Breach.** Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

Severability.

Section 1-108. **Severability.** If any provision or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Captions included.

Section 1-109. **Section Captions.** Section captions are parts of this Act.

Part 2

General Definitions and Principles of Interpretation

Definitions:

Section 1-201. **General Definitions.** Subject to additional definitions contained in the subsequent articles of this Act which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Act:

"Action."

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

"Aggrieved party."

(2) "Aggrieved party" means a party entitled to resort to a remedy.

"Agreement."

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Act (Section 1-205 and 2-208). Whether an agreement has legal consequences is determined by the provisions of this Act, if applicable; otherwise by the law of contracts (Section 1-103).

"Bank."

(4) "Bank" means any person engaged in the business of banking.

"Bearer."

(5) "Bearer" means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

"Bill of lading."

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding

goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

"Branch."

(7) "Branch" includes a separately incorporated foreign branch of a bank.

"Burden of establishing."

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

"Buyer in ordinary course of business."

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

"Buying."

"Conspicuous."

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: Non-Negotiable Bill of Lading) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

"Contract."

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Act and any other applicable rules of law.

"Creditor."

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

"Defendant."

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

"Delivery." (14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

"Document of title." (15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

"Fault." (16) "Fault" means wrongful act, omission or breach.

"Fungible." (17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Act to the extent that under a particular agreement or document unlike units are treated as equivalents.

"Genuine." (18) "Genuine" means free of forgery or counterfeiting.

"Good faith." (19) "Good faith" means honesty in fact in the conduct or transaction concerned.

"Holder." (20) "Holder" means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or to his order or to bearer or in blank.

"Honor." (21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

"Insolvency proceedings." (22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

"Insolvent." (23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

"Money." (24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

"Notice." (25) A person has "notice" of a fact when:

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

"Knows." "Knowledge." "Discover." "Learn." A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Act.

"Notifies." "Gives." (26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it.

"Receives." A person "receives" a notice or notification when:

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

Effective time of notice. (27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and

that the transaction would be materially affected by the information.

"Organization." (28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

"Party." "Third party." (29) "Party" as distinct from "third party" means a person who has engaged in a transaction or made an agreement within this Act.

"Person." (30) "Person" includes an individual or an organization.

"Presumption." "Presumed." (31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

"Purchase." (32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

"Purchaser." (33) "Purchaser" means a person who takes by purchase.

"Remedy." (34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

"Representative." (35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

"Rights." (36) "Rights" includes remedies.

"Security interest." (37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts, chattel paper, or contract rights which is subject to Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under Section 2-401 is not a "security interest", but a buyer

may also acquire a "security interest" by complying with Article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (Section 2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

"Send." (38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

"Signed." (39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

"Surety." (40) "Surety" includes guarantor.

"Telegram." (41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

"Term." (42) "Term" means that portion of an agreement which relates to a particular matter.

"Unauthorized." (43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

"Value." (44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (Section 3-303, 4-208 and 4-209) a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a pre-existing claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

"Warehouse receipt."

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

"Written." "Writing."

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

Third party document as evidence.

Section 1-202. **Prima Facie Evidence by Third Party Documents.** A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

Obligation of good faith.

Section 1-203. **Obligation of Good Faith.** Every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement.

Section 1-204. **Time; Reasonable Time; "Seasonably".**

Reasonable time defined.

(1) Whenever this Act requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

Section 1-205. **Course of Dealing and Usage of Trade.**

Course of dealing defined.

(1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

Usage of trade defined.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place,

vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

Effect.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

Consistent construction.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

Place of performance.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

Evidence not admissible unless notice given.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

Section 1-206. **Statute of Frauds for Kinds of Personal Property Not Otherwise Covered.**

Contract for sale of personal property over $5,000 not enforceable unless evidenced by writing.

(1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

Exclusions.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (Section 2-201) nor of securities (Section 8-319) nor to security agreements (Section 9-203).

Effect—reservation of rights—sufficiency.

Section 1-207. **Performance or Acceptance Under Reservation of Rights.** A party who with explicit reservation of rights performs or promises performance or

assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

Construction of option to accelerate.

Section 1-208. **Option to Accelerate at Will.** A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

ARTICLE 2

SALES

Part 1

Short Title, General Construction and Subject Matter

Title—Uniform Commercial Code—Sales.

Section 2-101. **Short Title.** This Article shall be known and may be cited as Uniform Commercial Code—Sales.

Scope—transactions in goods—exclusions.

Section 2-102. **Scope; Certain Security and Other Transactions Excluded From This Article.** Unless the context otherwise requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

Definitions:

Section 2-103. **Definitions and Index of Definitions.**

(1) In this Article unless the context otherwise requires:

"Buyer."

(a) "Buyer" means a person who buys or contracts to buy goods.

"Good faith."

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

"Receipt."

(c) "Receipt" of goods means taking physical possession of them.

"Seller."

(d) "Seller" means a person who sells or contracts to sell goods.

Index to other definitions.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Acceptance". Section 2-606.
"Banker's credit". Section 2-325.
"Between merchants". Section 2-104.
"Cancellation". Section 2-106(4).
"Commercial unit". Section 2-105.
"Confirmed credit". Section 2-325.
"Conforming to contract". Section 2-106.
"Contract for sale". Section 2-106.
"Cover". Section 2-712.
"Entrusting". Section 2-403.
"Financing agency". Section 2-104.
"Future goods". Section 2-105.
"Goods". Section 2-105.
"Identification". Section 2-501.
"Installment contract". Section 2-612.
"Letter of Credit". Section 2-325.
"Lot". Section 2-105.
"Merchant". Section 2-104.
"Overseas". Section 2-323.
"Person in position of seller". Section 2-707.
"Present sale". Section 2-106.
"Sale". Section 2-106.
"Sale on approval". Section 2-326.
"Sale or return". Section 2-326.
"Termination". Section 2-106.

(3) The following definitions in other Articles apply to this Article:

"Check". Section 3-104.
"Consignee". Section 7-102.
"Consignor". Section 7-102.
"Consumer goods". Section 9-109.
"Dishonor". Section 3-507.
"Draft". Section 3-104.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Section 2-104. **Definitions: "Merchant"; "Between Merchants"; "Financing Agency".**

"Merchant."

(1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds him-

self out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

"Financing agency."

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 2-707).

"Between merchants."

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Section 2-105. **Definitions: Transferability; "Goods"; "Future" Goods; "Lot"; "Commercial Unit".**

"Goods."

(1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Section 2-107).

Existing goods. "Future" goods.

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

Part interest.

(3) There may be a sale of a part interest in existing identified goods.

Undivided share—bulk fungible goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the

extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

Owner in common.

"Lot."

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

"Commercial unit."

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

Section 2-106. **Definitions: "Contract"; "Agreement"; "Contract for Sale"; "Sale"; "Present Sale"; "Conforming" to Contract; "Termination"; Cancellation".**

"Contract." "Agreement."

"Contract for sale." "Sale."

"Present sale."

(1) In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2-401). A "present sale" means a sale which is accomplished by the making of the contract.

"Conforming."

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

"Termination."

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

"Cancellation."

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

Section 2-107. **Goods to Be Severed From Realty: Recording.**

Contracts contemplating severance.

(1) A contract for the sale of timber, minerals or the like or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

Recording—notice.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

Part 2

Form, Formation and Readjustment of Contract

Section 2-201. **Formal Requirements; Statute of Frauds.**

Contract for sale of goods over $500 not enforceable unless evidenced by writing.

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars ($500) or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written

notice of objection to its contents is given within ten days after it is received.

Exceptions.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable:

Specially manufactured goods.

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

Admission.

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

Acceptance.

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (Sec. 2-606).

Parol evidence—final written expression.

Section 2-202. **Final Written Expressions: Parol or Extrinsic Evidence.** Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

Course of dealing—usage of trade.

(a) by course of dealing or usage of trade (Section 1-205) or by course of performance (Section 2-208); and

Additional terms.

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Seals inoperative.

Section 2-203. **Seals Inoperative.** The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

Section 2-204. **Formation in General.**

Formation of contracts for sale.

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonable certain basis for giving an appropriate remedy.

Firm offers.

Section 2-205. **Firm Offers.** An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

Section 2-206. **Offer and Acceptance in Formation of Contract.**

Offers—construction.

(1) Unless otherwise unambiguously indicated by the language or circumstances:

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

Lapse.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

Section 2-207. **Additional Terms in Acceptance or Confirmation.**

Acceptance—construction of additional terms.

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

Conduct of parties.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Act.

Section 2-208. **Course of Performance or Practical Construction.**

Course of performance.

(1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

Construction.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (Section 1-205).

Relevancy.

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

Section 2-209. **Modification, Rescission and Waiver.**

No consideration. (1) An agreement modifying a contract within this Article needs no consideration to be binding.

Modification or rescission. (2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

Statute of frauds. (3) The requirements of the statute of frauds section of this Article (Section 2-201) must be satisfied if the contract as modified is within its provisions.

Waiver. (4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

Retraction. (5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

Section 2-210. **Delegation of Performance; Assignment of Rights.**

Delegation of performance. (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

Assignment of rights. (2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

Prohibition of assignment. (3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

Terms of assignment. (4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar

general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

Demand for assurances. (5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (Section 2-609).

Part 3

General Obligation and Construction of Contract

Obligations of seller and buyer. Section 2-301. **General Obligation of Parties.** The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

Section 2-302. **Unconscionable Contract or Clause.**

Unconscionable contract. (1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

Hearing. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Allocation—division of risk. Section 2-303. **Allocation or Division of Risks.** Where this Article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden.

Section 2-304. **Price Payable in Money, Goods, Realty, or Otherwise.**

Payment of price—money or otherwise. (1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

Interest in realty. (2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and

the seller's obligations with reference to them are subject to this Article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

Section 2-305. **Open Price Term.**

Price left open—reasonableness.

(1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

Good faith.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

Option to cancel.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

Obligations where no contract.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

Section 2-306. **Output, Requirements and Exclusive Dealings.**

Output contract.

(1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

Exclusive dealing.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation

by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

Delivery—single or lots.

Section 2-307. **Delivery in Single Lot or Several Lots.** Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

Place for delivery.

Section 2-308. **Absence of Specified Place for Delivery.** Unless otherwise agreed:

(a) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels.

Section 2-309. **Absence of Specific Time Provisions; Notice of Termination.**

Time for delivery.

(1) The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.

Duration.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

Notice of termination.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

Section 2-310. **Open Time for Payment or Running of Credit; Authority to Ship Under Reservation.** Unless otherwise agreed:

Payment due.

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

Reservation—inspection.

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender

the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (Section 2-513); and

Documents of title.

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

Credit period.

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

Section 2-311. **Options and Cooperation Respecting Performance.**

Particulars of performance.

(1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of Section 2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

Specifications—options.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1) (c) and (3) of Section 2-319 specifications or arrangements relating to shipment are at the seller's option.

Additional remedies.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

Section 2-312. **Warranty of Title and Against Infringement; Buyer's Obligation Against Infringement.**

Warranties of seller.

(1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that:

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

Specific exclusion or modification.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

Warranty against infringement.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

Section 2-313. **Express Warranties by Affirmation, Promise, Description, Sample.**

Express warranties of seller.

(1) Express warranties by the seller are created as follows:

Affirmation.

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

Description.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

Sample or model.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

Use of words.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely

Opinion only.

of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

Section 2-314. **Implied Warranty: Merchantability; Usage of Trade.**

Implied warranty—merchantable goods.

(1) Unless excluded or modified (Section 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

Qualifications.

(2) Goods to be merchantable must be at least such as:

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

Other implied warranties.

(3) Unless excluded or modified (Section 2-316) other implied warranties may arise from course of dealing or usage of trade.

Implied warranty—fitness for purpose.

Section 2-315. **Implied Warranty: Fitness for Particular Purpose.** Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

Section 2-316. **Exclusion or Modification of Warranties.**

Exclusion or modification of warranties—reasonable construction.

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (Section 2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

Conspicuous language.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2):

"As is."

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

Buyer's examination.

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

Course of dealing—usage.

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

Remedies limited.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (Sections 2-718 and 2-719).

Construction—intention of parties.

Section 2-317. **Cumulation and Conflict of Warranties Express or Implied.** Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which

warranty is dominant. In ascertaining that intention the following rules apply:

Specifications. (a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

Sample from bulk. (b) A sample from an existing bulk displaces inconsistent general language of description.

Express warranties. (c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

Extension of warranties. Section 2-318. **Third Party Beneficiaries of Warranties Express or Implied.** A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

Section 2-319. **F. O. B. and F. A. S. Terms.**

F.O.B. defined—duties of seller. (1) Unless otherwise agreed the term F. O. B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which:

(a) when the term is F. O. B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (Section 2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F. O. B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Article (Section 2-503);

(c) when under either (a) or (b) the term is also F. O. B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F. O. B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of

this Article on the form of bill of lading (Section 2-323).

F.A.S. defined—duties of seller. (2) Unless otherwise agreed the term F. A. S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must:

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

Duty of buyer—instructions. (3) Unless otherwise agreed in any case falling within subsection (1) (a) or (c) of subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this Article (Section 2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

Payment against tender of documents (4) Under the term F. O. B. vessel or F. A. S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

Section 2-320. **C. I. F. and C. & F. Terms.**

C.I.F. defined. (1) The term C. I. F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C. F. means that the price so includes cost and freight to the named destination.

C. & F. or C.F. defined.

Duties of seller. (2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C. I. F. destination or its equivalent requires the seller at his own expense and risk to:

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills

of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

Obligations.

(3) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C. I. F. term except the obligation as to insurance.

Payment against tender of documents.

(4) Under the term C. I. F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

Section 2-321. **C.I.F. or C. & F.: "Net Landed Weights"; "Payment on Arrival"; Warranty of Condition on Arrival.** Under a contract containing a term C. I. F. or C. & F.

"Net landed weights," etc.—estimate—adjustment.

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after

final adjustment of the price a settlement must be made with commercial promptness.

Seller's risk.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

Inspection.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

Section 2-322. **Delivery "Ex-Ship."**

"Ex-ship" defined.

(1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

Duties of seller.

(2) Under such a term unless otherwise agreed:

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

Section 2-323. **Form of Bill of Lading Required in Overseas Shipment; "Overseas".**

Negotiable bill of lading.

(1) Where the contract contemplates overseas shipment and contains a term C. I. F. or C. & F. or F. O. B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C. I. F. or C. & F., received for shipment.

Tender.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise

agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(a) due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery (subsection (1) of Section 2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

"Overseas" defined.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

"No arrival, no sale," etc.—duties of seller.

Section 2-324. **"No Arrival, No Sale" Term.** Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed:

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

Buyer's rights.

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there has been casualty to identify goods (Section 2-613).

Section 2-325. **"Letter of Credit" Term; "Confirmed Credit."**

Letter of credit

(1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

Suspension of payment.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

Definitions:

(3) Unless otherwise agreed the term "letter of

credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

Section 2-326. **Sale on Approval and Sale or Return; Consignment Sales and Rights of Creditors.**

(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(a) a "sale on approval" if the goods are delivered primarily for use; and "Sale on approval."

(b) a "sale or return" if the goods are delivered primarily for resale. "Sale or return."

Claims of buyer's creditors.

(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

Consignment sales—creditors' rights.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery: Exceptions.

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign; or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others; or

(c) complies with the filing provisions of the Article on Secured Transactions (Article 9).

Separate contract.

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (Section 2-201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (Section 2-202).

Section 2-327. **Special Incidents of Sale on Approval and Sale or Return.**

Sale on approval.

(1) Under a sale on approval unless otherwise agreed:

Risk of loss—title.

(a) although the good are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

Acceptance.

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

Risk of return.

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

Sale or return.

(2) Under a sale or return unless otherwise agreed:

Option to return.

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

Risk of return.

(b) the return is at the buyer's risk and expense.

Sale by auction.

Section 2-328. **Sale by Auction.**

Each lot is separate sale.

(1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

Completed sale—bidding.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

Sale with reserve.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

Sale without reserve.

Retraction.

Bid on seller's behalf—notice—remedies of buyer.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

Part 4

Title, Creditors and Good Faith Purchasers

Passing of title to goods.

Section 2-401. **Passing of Title; Reservation for Security; Limited Application of This Section.** Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

Identification to contract.

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this Act. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicity agreed on by the parties.

Reservation—security interest.

Title passes on completion of performance.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller com-

pletes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

Delivery without moving goods.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods:

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

Revesting of title.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

Section 2-402. **Rights of Seller's Creditors Against Sold Goods.**

Rights of seller's creditors.

(1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Article (Sections 2-502 and 2-716).

Remedies for fraud.

(2) A creditor of the seller may treat a sale or an identifcation of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

Rights of creditors not impaired.

(3) Nothing in this Article shall be deemed to impair the rights of creditors of the seller:

Secured transactions.

(a) under the provisions of the Article on Secured Transactions. (Article 9); or

Preference—pre-existing claim.

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or voidable preference.

Section 2-403. **Power to Transfer; Good Faith Purchase of Goods; "Entrusting".**

Extent of buyer's title.

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though:

Purchaser in good faith.

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale", or

(d) The delivery was procured through fraud punishable as larcenous under the criminal law.

Entrusted goods—transfer of title.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

"Entrusting" defined.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any conditioned expressed between parties to the delivery or acquiescence and regardless of whether the procurement

of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

Rights of others.

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9), Bulk Transfers (Article 6) and Documents of Title (Article 7).

Part 5

Performance

Section 2-501. **Insurable Interest in Goods; Manner of Identification of Goods.**

Buyer's special property and insurable interest.

(1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs:

Indentification of goods to contract.

(a) when the contract is made if it is for sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

Seller's retention.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

Insurable interest not impaired.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

Section 2-502. **Buyer's Right to Goods on Seller's Insolvency.**

Buyer's right to goods—seller's insolvency.

(1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immedaitely preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

Conformance to contract.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

Section 2-503. **Manner of Seller's Tender of Delivery.**

Duties of seller—tender of delivery.

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreemnt and this Article, and in particular:

Reasonable hour.

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

Facilities.

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

Shipment.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

Particular destination.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

Delivery by bailee without movement—requirements of tender.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved:

(a) tender requires that the seller either tender a negotiable document of title covering such goods or

procure acknowledgement by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

Delivery of documents.

(5) Where the contract requires the seller to deliver documents:

(a) he must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set (subsection (2) of Section 2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes nonacceptance or rejection.

Duties of seller—shipment.

Section 2-504. **Shipment by Seller.** Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must:

Delivery to carrier.

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

Documents.

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

Notice to buyer.

(c) promptly notify the buyer of the shipment.

Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues.

Section 2-505. **Seller's Shipment Under Reservation.**

Seller's shipment under reservation.

(1) Where the seller has identified goods to the contract by or before shipment:

Security interest.

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

Possession of goods as security.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of Section 2-507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

Effect of reservation.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

Section 2-506. **Rights of Financing Agency.**

Payment by financing agency—rights acquired.

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

Right to reimbursement.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face.

Section 2-507. **Effect of Seller's Tender; Delivery on Condition.**

Tender of delivery—condition to buyer's duty to accept and pay.

(1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

Payment—condition to buyer's right to goods.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

Section 2-508. **Cure by Seller of Improper Tender or Delivery; Replacement.**

Seller may cure nonconforming tender—contract time.

(1) Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

Notice to buyer—further time.

(2) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

Section 2-509. **Risk of Loss in the Absence of Breach.**

(1) Where the contract requires or authorizes the seller to ship the goods by carrier:

No particular destination—risk of loss to buyer on delivery to carrier.

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 2-505); but

Particular destination—risk of loss to buyer on tender.

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

Goods held by bailee—buyer's risk—conditions.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgement by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection (4)(b) of Section 2-503.

Receipt or tender—buyer's risk.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

Limitations.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (Section 2-327) and on effect of breach on risk of loss (Section 2-510).

Section 2-510. **Effect of Breach on Risk of Loss.**

Nonconforming tender—seller's risk.

(1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

Revocation—seller's risk.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

Buyer's breach—buyer's risk.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

Section 2-511. **Tender of Payment by Buyer; Payment by Check.**

Duties of buyer—tender of payment.

(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

Sufficiency.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal ten-

der and gives any extension of time reasonably necessary to procure it.

Conditional payment.

(3) Subject to the provisions of this Act on the effect of an instrument on an obligation (Section (3-802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

Section 2-512. **Payment by Buyer Before Inspection.**

Payment before inspection.

(1) Where the contract requires payment before inspection non conformity of the goods does not excuse the buyer from so making payment unless:

(a) the non conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this Act (Section 5-114).

Effect.

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

Section 2-513. **Buyer's Right to Inspection of Goods.**

Buyer's right to inspection.

(1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

Expenses.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

Contract provisions—no right to inspect.

(3) Unless otherwise agreed and subject to the provisions of this Article on C.I.F. contracts (subsection (3) of Section 2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides:

(a) for delivery "C.O.D." or in other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

Inspection by agreement.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

Section 2-514. **When Documents Deliverable on Acceptance; When on Payment.** Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment.

Delivery of documents—acceptance—payment.

Section 2-515. **Preserving Evidence of Goods in Dispute.** In furtherance of the adjustment of any claim or dispute:

Preserving evidence.

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

Party inspection.

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

Part 6

Breach, Repudiation and Excuse

Section 2-601. **Buyer's Rights on Improper Delivery.** Subject to the provisions of this Article on breach in installment contracts (Section 2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections 2-718 and 2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may:

Nonconformance—buyer's rights.

(a) reject the whole; or

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest.

Section 2-602. **Manner and Effect of Rightful Rejection.**

Notice of rejection.

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (Sections 2-603 and 2-604):

Wrongful use.

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

Duty to care for goods for seller.

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this Article (subsection (3) of Section 2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

Obligation.

(c) the buyer has no further obligations with regard to goods rightfully rejected.

Seller's rights.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on seller's remedies in general (Section 2-703).

Section 2-603. **Merchant Buyer's Duties as to Rightfully Rejected Goods.**

Duties of buyer—rejected goods.

(1) Subject to any security interest in the buyer (subsection (3) of Section 2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

Instructions.

Sale.

Expenses.

Buyer's rights to reimbursement.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of

the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

Good faith of buyer.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

Section 2-604. **Buyer's Options as to Salvage of Rightfully Rejected Goods.** Subject to the provisions of the immediately preceding section on perishables if the seller gives no instruction within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

Buyer's options—salvage—rejected goods.

Section 2-605. **Waiver of Buyer's Objections by Failure to Particularize.**

Buyer's waiver—unstated defects.

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach:

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

Defects on face of documents.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

Section 2-606. **What Constitutes Acceptance of Goods.**

Acceptance of goods defined.

(1) Acceptance of goods occurs when the buyer:

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or

(b) fails to make an effective rejection (subsection (1) of Section 2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

Section 2-607. **Effect of Acceptance; Notice of Breach; Burden of Establishing Breach After Acceptance; Notice of Claim or Litigation to Person Answerable Over.**

Duty to pay.

(1) The buyer must pay at the contract rate for any goods accepted.

Rejection precluded.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for non conformity.

(3) Where a tender has been accepted:

Notice of breach.

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

Notice of suit.

(b) if the claim is one for infringement or the like (subsection (3) of Section 2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

Burden of proof.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over:

Notice of suit for breach of warranty.

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come

in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

Seller may demand control of litigation.

(b) if the claim is one for infringement or the like (subsection (3) of Section 2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expenses and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

Hold harmless provision.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of Section 2-312).

Section 2-608. **Revocation of Acceptance in Whole or in Part.**

Revocation of acceptance.

(1) The buyer may revoke his acceptance of a lot or commercial unit whose non conformity substantially impairs its value to him if he has accepted it:

Failure to cure.

(a) on the reasonable assumption that its non con formity would be cured and it has not been seasonably cured; or

Difficulty of discovery—seller's assurances.

(b) without discovery of such non conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

Reasonable time for discovery—notice to seller.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

Buyer's duties—goods.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

Section 2-609. **Right to Adequate Assurance of Performance.**

Right to assurance of performance.

Written demand.

(1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

Commercial standards.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

Rights not prejudiced.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

Failure to give assurances—repudiation.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

Rights of parties—anticipatory repudiation.

Section 2-610. **Anticipatory Repudiation.** When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (Section 2-703 or Section 2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (Section 2-704).

Section 2-611. **Retraction of Anticipatory Repudiation.**

Retraction of anticipatory repudiation—time.

(1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

Method of retraction.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Article (Section 2-609).

Reinstatement of rights.

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

Section 2-612. **"Installment Contract"; Breach.**

"Installment contract" defined.

(1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

Buyer may reject nonconforming installment.

(2) The buyer may reject any installment which is non conforming if the non conformity substantially impairs the value of that installment and cannot be cured or if the non conformity is a defect in the required documents; but if the non conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

Impairment of value—breach of contract.

(3) Whenever non conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

Damage to goods without fault of parties.

Section 2-613. **Casualty to Identified Goods.** Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (Section 2-324) then:

Total loss.

(a) if the loss is total the contract is avoided; and

Buyer's options.

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

Section 2-614. **Substituted Performance.**

Substitute performance.

(1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

Failure of payment—equivalent tender.

(2) If the agreed means or manner of payments fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

Section 2-615. **Excuse by Failure of Presupposed Conditions.** Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

Seller excused—failure of presupposed conditions.

(a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

Seller may allocate.

(b) Where the causes mention in paragraph (a) affect only a part of the seller's capacity to perform, he

must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

Notice to buyer.

(c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

Section 2-616. **Procedure on Notice Claiming Excuse.**

Options of buyer on notice of delay or allocation.

(1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Article relating to breach of installment contracts (Section 2-612), then also as to the whole:

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section.

Part 7

Remedies

Section 2-701. **Remedies for Breach of Collateral Contracts Not Impaired.** Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Article.

Remedies not impaired.

Section 2-702. **Seller's Remedies on Discovery of Buyer's Insolvency.**

Buyer's insolvency—seller may demand cash.

(1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Article (Section 2-705).

Reclamation of goods.

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

Subject to purchase in good faith.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this Article (Section 2-403). Successful reclamation of goods excludes all other remedies with respect to them.

Seller's remedies—buyer's breach of contract.

Section 2-703. **Seller's Remedies in General.** Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (Section 2-612), then also with respect to the whole undelivered balance, the aggrieved seller may:

(a) withhold delivery of such goods;

(b) stop delivery by any bailee as hereafter provided (Section 2-705);

(c) proceed under the next section respecting goods still unidentified to the contract;

(d) resell and recover damages as hereafter provided (Section 2-706);

(e) recover damages for non-acceptance (Section 2-708) or in a proper case the price (Section 2-709);

(f) cancel.

Section 2-704. **Seller's Right to Identify Goods to the**

Contract Notwithstanding Breach or to Salvage Unfinished Goods.

Seller's rights—buyer's breach.

(1) An aggrieved seller under the preceding section may:

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

Completion or salvage.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

Section 2-705. **Seller's Stoppage of Delivery in Transit or Otherwise.**

Seller's right to stoppage in transitu—buyer's insolvency.

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (Section 2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

Options.

(2) As against such buyer the seller may stop delivery until:

(a) receipt of the goods by the buyer; or

(b) acknowledgement to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgement to the buyer by a carrier by reshipment or as warehouseman; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

Notice to bailee.

(3) (a) To stop delivery the seller must so notify as

to enable the bailee by reasonable diligence to prevent delivery of the goods.

Duties of bailee.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

Negotiable document of title.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

Notice to carrier by consignor.

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

Section 2-706. **Seller's Resale Including Contract for Resale.**

Seller may resell goods—recover deficiency.

(1) Under the conditions stated in Section 2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance therof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (Section 2-710), but less expenses saved in consequence of the buyer's breach.

Method of sale.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, maner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

Private sale—notice.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

Public sale.

(4) Where the resale is at public sale:

Identified goods.

(a) only identified goods can be sold except where

there is a recognized market for a public sale of futures in goods of the kind; and

Place—notice.

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

Notification of sale.

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

Seller may buy.

(d) the seller may buy.

Purchaser in good faith.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

Accounting.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Section 2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of Section 2-711).

Section 2-707. **"Person in the Position of a Seller".**

"Person in position of seller" defined.

(1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

Rights.

(2) A person in the position of a seller may as provided in this Article withhold or stop delivery (Section 2-705) and resell (Section 2-706) and recover incidental damages (Section 2-710).

Section 2-708. **Seller's Damages for Non-acceptance or Repudiation.**

Seller's measure of damages—market price.

(1) Subject to subsection (2) and to the provisions of this Article with respect to proof of market price (Section 2-723), the measure of damages for non-acceptance or

repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (Section 2-710), but less expenses saved in consequence of the buyer's breach.

Measure of damages—profit.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (Section 2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

Section 2-709. **Action for the Price.**

Seller's action for price.

(1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price:

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

Duty of seller regarding goods.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

Damages for nonacceptance.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (Section 2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section.

Seller's incidental damages.

Section 2-710. **Seller's Incidental Damages.** Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

Section 2-711. **Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods.**

Buyer's remedies.

(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Section 2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid:

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for non-delivery as provided in this Article (Section 2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also:

(a) if the goods have been identified recover them as provided in this Article (Section 2-502); or

(b) in a proper case obtain specific performance or recover the goods as provided in this Article (Section 2-716).

Buyer's security interest—resale.

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 2-706).

Section 2-712. **"Cover"; Buyer's Procurement of Substitute Goods.**

Buyer may "cover."

(1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or

contract to purchase goods in substitution for those due from the seller.

Measure of damages.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2-715), but less expenses saved in consequence of the seller's breach.

Other remedies not barred.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

Section 2-713. **Bnyer's Damages for Non-Delivery or Repudiation.**

Buyer's measure of damages—nondelivery or repudiation of seller.

(1) Subject to the provisions of this Article with respect to proof of market price (Section 2-723), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (Section 2-715), but less expenses saved in consequence of the seller's breach.

Market price.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

Section 2-714. **Buyer's Damages for Breach in Regard to Accepted Goods.**

Buyer's measure of damages—breach of contract.

(1) Where the buyer has accepted goods and given notification (subsection (3) of Section 2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

Breach of warranty.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

Additional recovery.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

Section 2-715. **Buyer's Incidental and Consequential Damages.**

Incidental damages.

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

Consequential damages.

(2) Consequential damages resulting from the seller's breach include:

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

Section 2-716. **Buyer's Right to Specific Performance or Recovery of Goods.**

Specific performance.

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

Decree.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

Recovery of goods.

(3) The buyer has a right to maintain an action for the recovery of goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

Section 2-717. **Deduction of Damages From the Price.** Buyer may deduct damage from price.

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of contract from any part of the price still due under the same contract.

Section 2-718. **Liquidation or Limitation of Damages; Deposits.**

Liquidated damages.

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is

reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

Void penalty.

Restitution to buyer.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds:

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty per cent of the value of the total performance for which the buyer is obligated under the contract or five hundred dollars ($500), whichever is smaller.

Offset to seller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes:

(a) a right to recover damages under the provisions of this Article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

Payment in goods—treatment.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (Section 2-706).

Section 2-719. **Contractual Modification or Limitation of Remedy.**

Contract may provide additional remedies—limitations.

(1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this Article and may limit or alter the measure of

damages recoverable under this Article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

Failure of remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.

Limitation, exclusion—consequential damages.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

Section 2-720. **Effect of "Cancellation" or "Rescission" on Claims for Antecedent Breach.** Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

Construction—antecedent breach.

Section 2-721. **Remedies for Fraud.** Remedies for material misrepresentation or fraud include all remedies available under this Article for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

Remedies for fraud.

Section 2-722. **Who Can Sue Third Parties for Injury to Goods.** Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract:

Proper parties to suit against third party—injury to goods

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern.

Section 2-723. **Proof of Market Price: Time and Place.**

Determination of market price.

(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (Section 2-708 or Section 2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

Reasonable substitute.

(2) If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

Notice of evidence.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

Admissibility of market quotations as evidence.

Section 2-724. **Admissibility of Market Quotations.** Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

Section 2-725. **Statute of Limitations in Contracts for Sale.**

Time for suit—breach of contract.

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

Time of accrual of action.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

Termination—other remedies.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

Application of law.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this Act becomes effective.

ARTICLE 3

COMMERCIAL PAPER

Part 1

Short Title, Form and Interpretation

Title—Uniform Commercial Code—Commercial Paper.

Section 3-101. **Short Title.** This Article shall be known and may be cited as Uniform Commercial Code—Commercial Paper.

Section 3-102. **Definitions and Index of Definitions.**

Definitions:

(1) In this Article unless the context otherwise requires:

"Issue." (a) "Issue" means the first delivery of an instrument to a holder or a remitter.

"Order." (b) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

"Promise." (c) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.

"Secondary party." (d) "Secondary party" means a drawer or endorser.

"Instrument." (e) "Instrument" means a negotiable instrument.

Index to definitions. (2) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance". Section 3-410.
"Accommodation party". Section 3-415.
"Alteration". Section 3-407.
"Certificate of deposit". Section 3-104.
"Certification". Section 3-411.
"Check". Section 3-104.
"Definite time". Section 3-109.
"Dishonor". Section 3-507.
"Draft". Section 3-104.
"Holder in due course". Section 3-302.
"Negotiation". Section 3-202.
"Note". Section 3-104.
"Notice of dishonor". Section 3-508.
"On demand". Section 3-108.
"Presentment". Section 3-504.
"Protest". Section 3-509.
"Restrictive Indorsement". Section 3-205.
"Signature". Section 3-401.

(3) The following definitions in other Articles apply to this Article:

"Account". Section 4-104.
"Banking Day". Section 4-104.
"Clearing house". Section 4-104.
"Collecting bank". Section 4-105.
"Customer". Section 4-104.
"Depositary Bank". Section 4-105.
"Documentary Draft". Section 4-104.

"Intermediary Bank". Section 4-105.
"Item". Section 4-104.
"Midnight deadline". Section 4-104.
"Payor bank". Section 4-105.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Section 3-103. **Limitations on Scope of Article.**

Scope of articles—subject to other provisions. (1) This Article does not apply to money, documents of title or investment securities.

(2) The provisions of this Article are subject to the provisions of the Article on Bank Deposits and Collections (Article 4) and Secured Transactions (Article 9).

Section 3-104. **Form of Negotiable Instruments; "Draft"; "Check"; "Certificate of Deposit"; "Note".**

Requirements—negotiable instrument. (1) Any writing to be a negotiable instrument within this Article must:

(a) be signed by the maker or drawer; and

(b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this Article; and

(c) be payable on demand or at a definite time; and

(d) be payable to order or to bearer.

(2) A writing which complies with the requirements of this section is:

(a) a "draft" ("bill of exchange") if it is an order; "Draft."

(b) a "check" if it is a draft drawn on a bank and payable on demand; "Check."

(c) a "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it; "Certificate of deposit."

(d) a "note" if it is a promise other than a certificate of deposit. "Note."

Non-negotiable instruments—reference. (3) As used in other Articles of this Act, and as the context may require, the terms "draft", "check", "cer-

tificate of deposit'' and ''note'' may refer to instruments which are not negotiable within this Article as well as to instruments which are so negotiable.

Section 3-105. **When Promise or Order Unconditional.**

Unconditional promise or order defined.

(1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument:

(a) is subject to implied or constructive conditions; or

(b) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or ''as per'' such transaction; or

(c) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or

(d) states that it is drawn under a letter of credit; or

(e) states that it is secured, whether by mortgage, reservation of title or otherwise; or

(f) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or

(g) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or

(h) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(2) A promise or order is not unconditional if the instrument:

(a) states that it is subject to or governed by any other agreement; or

(b) states that it is to be paid only out of a particular fund or source except as provided in this section.

Section 3-106. **Sum Certain.**

Sum certain defined.

(1) The sum payable is a sum certain even though it is to be paid:

(a) with stated interest or by stated installments; or

(b) with stated different rates of interest before and after default or a specified date; or

(c) with a stated discount or addition if paid before or after the date fixed for payment; or

(d) with exchange or less exchange, whether at a fixed rate or at the current rate; or

(e) with costs of collection or an attorney's fee or both upon default.

(2) Nothing in this section shall validate any term which is otherwise illegal.

Section 3-107. **Money.**

Money defined.

(1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in ''currency'' or ''current funds'' is payable in money.

(2) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency.

Payable on demand defined.

Section 3-108. **Payable on Demand.** Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated.

Section 3-109. **Definite Time.**

Payable at definite time defined.

(1) An instrument is payable at a definite time if by its terms it is payable;

(a) on or before a stated date or at a fixed period after a stated date; or

(b) at a fixed period after sight; or

(c) at a definite time subject to any acceleration; or

(d) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

Instrument payable on uncertain event.

(2) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred.

Section 3-110. **Payable to Order.**

Payable to order defined.

(1) An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of:

(a) the maker or drawer; or

(b) the drawee; or

(c) a payee who is not maker, drawer or drawee; or

(d) two or more payees together or in the alternative; or

(e) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or

(f) an office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or

(g) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be indorsed or transferred by any person thereto authorized.

(2) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly indorsed."

(3) An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten.

Payable to bearer defined.

Section 3-111. **Payable to Bearer.** An instrument is payable to bearer when by its terms it is payable to:

(a) bearer or the order of bearer; or

(b) a specified person or bearer; or

(c) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee.

Section 3-112. **Terms and Omissions Not Affecting Negotiability.**

Negotiability not affected—conditions.

(1) The negotiability of an instrument is not affected by:

(a) the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or

(b) a statement that collateral has been given to secure obligations either on the instrument or otherwise of an obligor on the instrument or in the case of default on those obligations the holder may realize on or dispose of the collateral; or

(c) a promise or power to maintain or protect collateral or to give additional collateral; or

(d) a term authorizing a confession of judgment on the instrument if it is not paid when due; or

(e) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or

(f) a term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or

(g) a statement in a draft drawn in a set of parts (Section 3-801) to the effect that the order is effective only if no other part has been honored.

Illegal terms not validated.

(2) Nothing in this section shall validate any term which is otherwise illegal.

Seal.

Section 3-113. **Seal.** An instrument otherwise negotiable is within this Article even though it is under a seal.

Section 3-114. **Date, Antedating, Postdating.**

Determination of date payable.

(1) The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct.

Section 3-115. **Incomplete Instruments.**

Incomplete instrument—enforcement when completed.

(1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

Unauthorized completion.

(2) If the completion is unauthorized the rules as to material alteration apply (Section 3-407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting.

Enforcement—payable to more than one person.

Section 3-116. **Instruments Payable to Two or More Persons.** An instrument payable to the order of two or more persons:

(a) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;

(b) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them.

Instruments payable—descriptive words.

Section 3-117. **Instruments Payable With Words of Description.** An instrument made payable to a named person with the addition of words describing him:

Agent or officer.

(a) as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;

Fiduciary.

(b) as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him;

Payee.

(c) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties.

Ambiguous terms—rules of construction.

Section 3-118. **Ambiguous Terms and Rules of Construction.** The following rules apply to every instrument:

(a) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.

(b) Handwritten terms control typewritten and printed terms, and typewritten control printed.

(c) Words control figures except that if the words are ambiguous figures control.

(d) Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.

(e) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or indorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay".

(f) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option to extend an instrument over the objection of a maker or acceptor or other party who in accordance with Section 3-604 tenders full payment when the instrument is due.

Section 3-119. **Other Writings Affecting Instrument.**

Effect of other writings.

(1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement ex-

ecuted as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

Negotiability not affected.

(2) A separate agreement does not affect the negotiability of an instrument.

Instruments "payable through" bank—effect.

Section 3-120. **Instruments "Payable Through" Bank.** An instrument which states that it is "payable through" a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument.

Instruments payable at bank—effect.

Section 3-121. **Instruments Payable at Bank.** A note or acceptance which states that it is payable at a bank is not of itself an order or authorization to the bank to pay it.

Section 3-122. **Accrual of Cause of Action.**

Accrual of causes of action against maker or acceptor.

(1) A cause of action against a maker or an acceptor accrues:

(a) in the case of a time instrument on the day after maturity;

(b) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

Obligor.

(2) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

Drawer or endorser.

(3) A cause of action against a drawer of a draft or an indorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

Interest.

(4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment:

(a) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

(b) in all other cases from the date of accrual of the cause of action.

Part 2

Transfer and Negotiation

Section 3-201. **Transfer: Right to Indorsement.**

Transfer of instrument.

(1) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

Transfer—security interest.

(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

Transfer for value—endorsement.

(3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made and until that time there is no presumption that the transferee is the owner.

Section 3-202. **Negotiation.**

Negotiation defined.

(1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.

Form of indorsement.

(2) An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

Effect of indorsement.

(3) An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

Effect of words accompanying indorsement.

(4) Words of assignment, condition, waiver, guaranty, limtiation or disclaimer of liability and the like accompanying an indorsement do not affect its character as an indorsement.

Indorsement—wrong or misspelled name.

Section 3-203. **Wrong or Misspelled Name.** Where an instrument is made payable to a person under a misspel-

led name or one other than his own he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument.

Section 3-204. **Special Indorsement; Blank Indorsement.**

Special indorsement.

(1) A special indorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.

Indorsement in blank.

(2) An indorsement in blank specifies no particular indorsee and may consist of a mere signature. An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed.

Conversion to special indorsement.

(3) The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

Restrictive indorsements defined.

Section 3-205. **Restrictive Indorsements.** An indorsement is restrictive which either:

(a) is conditional; or

(b) purports to prohibit further transfer of the instrument; or

(c) includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or

(d) otherwise states that it is for the benefit or use of the indorser or of another person.

Section 3-206. **Effect of Restrictive Indorsement.**

Effect of restricitve indorsement.

(1) No restrictive indorsement prevents further transfer or negotiation of the instrument.

Notice—immediate transferor.

(2) An intermediary bank, or a payor bank which is not the depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor or the person presenting for payment.

Duty of transferee—holder in due course.

(3) Except for an intermediary bank, any transferee under an indorsement which is conditional or includes the words "for collection", "for deposit", pay any bank", or like terms (subparagraphs (a) and (c) of Section 3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of Section 3-302 on what constitutes a holder in due course.

Duty of first taker—holder in due course.

(4) The first taker under an indorsement for the benefit of the indorser or another person (subparagraph (d) of Section 3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of Section 3-302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive indorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (subsection (2) of Section 3-304).

Section 3-207. **Negotiation Effective Although It May Be Rescinded.**

Negotiation effective although subject to rescission.

(1) Negotiation is effective to transfer the instrument although the negotiation is:

(a) made by an infant, a corporation exceeding its powers, or any other person without capacity; or

(b) obtained by fraud, duress or mistake of any kind; or

(c) part of an illegal transaction; or

(d) made in breach of duty.

(2) Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law.

Reacquisition—further negotiation—discharge.

Section 3-208. **Reacquisition.** Where an instrument is returned to or reacquired by a prior party he may cancel any indorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his indorsement has been cancelled is discharged as against subsequent holders in due course as well.

Part 3

Rights of a Holder

Rights of holder.

Section 3-301. **Rights of a Holder.** The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in Section 3-603 on payment or satisfaction, discharge it or enforce payment in his own name.

Section 3-302. **Holder in Due Course.**

Holder in due course defined.

(1) A holder in due course is a holder who takes the instrument:

(a) for value; and

(b) in good faith; and

(c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

Payee.

(2) A payee may be a holder in due course.

Holder not in due course.

(3) A holder does not become a holder in due course of an instrument:

(a) by purchase of it at judicial sale or by taking it under legal process; or

(b) by acquiring it in taking over an estate; or

(c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.

Limited interest.

(4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased.

Taking for value defined.

Section 3-303. **Taking for Value.** A holder takes the instrument for value:

(a) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or

(b) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

(c) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person.

Section 3-304. **Notice to Purchaser.**

Notice to purchaser.

(1) The purchaser has notice of a claim or defense if:

Irregular instrument.

(a) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or

Notice of voidable obligation.

(b) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

Notice of breach of duty.

(2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.

Notice of overdue instrument.

(3) The purchaser has notice that an instrument is overdue if he has reason to know:

(a) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or

(b) that acceleration of the instrument has been made; or

(c) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be thirty days.

Knowledge of certain facts not notice of defense or claim.

(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim:

(a) that the instrument is antedated or postdated;

(b) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;

(c) that any party has signed for accommodation;

(d) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;

(e) that any person negotiating the instrument is or was a fiduciary;

(f) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

Effect of recording.

(5) The filing or recording of a document does not of itself constitute notice within the provisions of this Article to a person who would otherwise be a holder in due course.

Effective notice.

(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

Rights of holder in due course

Section 3-305. **Rights of a Holder in Due Course.** To the extent that a holder is a holder in due course he takes the instrument free from:

(1) all claims to it on the part of any person; and

(2) all defenses of any party to the instrument with whom the holder has not dealt except:

(a) infancy, to the extent that it is a defense to a simple contract; and

(b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and

(c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and

(d) discharge in insolvency proceedings; and

(e) any other discharge of which the holder has notice when he takes the instrument.

Rights of holder—not in due course.

Section 3-306. **Rights of One Not Holder in Due Course.** Unless he has the rights of a holder in due course any person takes the instrument subject to:

(a) all valid claims to it on the part of any person; and

(b) all defenses of any party which would be available in an action on a simple contract; and

(c) the defenses of want or failure of consideration, non-performance of any condition precedent, nondelivery, or delivery for a special purpose (Section 3-408); and

(d) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive indorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party.

Section 3-307. **Burden of Establishing Signatures, Defenses and Due Course.**

Burden of proof—signatures.

(1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue:

(a) the burden of establishing it is on the party claiming under the signature; but

(b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

Production of instrument.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

Defense shown—burden shifts.

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.

Part 4

Liability of Parties

Section 3-401. **Signature.**

Liability on signature.

(1) No person is liable on an instrument unless his signature appears thereon.

Made by use of name, word, mark.

(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature.

Ambiguous signature—indorsement.

Section 3-402. **Signature in Ambiguous Capacity.** Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement.

Section 3-403. **Signature by Authorized Representative.**

Signature of authorized representatives.

(1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

Personal obligation.

(2) An authorized representative who signs his own name to an instrument:

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

Officer of organization.

(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

Section 3-404. **Unauthorized Signatures.**

Unauthorized signature—personal obligation.

(1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he

ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

Ratification.

(2) Any unauthorized signature may be ratified for all purposes of this Article. Such ratification does not of itself affect any rights of the person ratifying against the actual signer.

Section 3-405. **Imposters; Signature in Name of Payee.**

Effect of indorsement by imposter.

(1) An indorsement by any person in the name of a named payee is effective if:

(a) an imposter by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or

(b) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(c) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so indorsing.

Section 3-406. **Negligence Contributing to Alteration or Unauthorized Signature.** Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business.

Liability—negligent contribution to alteration or unauthorized signature.

Section 3-407. **Alteration.**

Material alteration defined.

(1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in:

(a) the number or relations of the parties; or

(b) an incomplete instrument, by completing it otherwise than as authorized; or

(c) the writing as signed, by adding to it or by removing any part of it.

(2) As against any person other than a subsequent holder in due course:

(a) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or its precluded from asserting the defense;

(b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

Rights of subsequent holder in due course.

(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed.

Want or failure of consideration as defense.

Section 3-408. **Consideration.** Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (Section 3-305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this Act under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount.

Section 3-409. **Draft Not an Assignment.**

Draft is not assignment.

(1) A check or other draft does not of itself operate as an assignment of any fund in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

Other liability not affected.

(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance.

Section 3-410. **Definition and Operation of Acceptance.**

Acceptance—form—operation.

(1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the

draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

Incomplete draft may be accepted.

(2) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

Completion of date.

(3) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith.

Section 3-411. **Certification of a Check.**

Check certification—discharge of drawers, indorsers.

(1) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior indorsers are discharged.

No duty to certify.

(2) Unless otherwise agreed a bank has no obligation to certify a check.

Lack of proper indorsement—discharge of drawer.

(3) A bank may certify a check before returning it for lack of proper indorsement. If it does so the drawer is discharged.

Section 3-412. **Acceptance Varying Draft.**

Effects of acceptance varying draft.

(1) Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance cancelled.

Place of payment.

(2) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.

Nonassent—discharge.

(3) Where the holder assents to an acceptance varying the terms of the draft each drawer and indorser who does not affirmatively assent is discharged.

Section 3-413. **Contract of Maker, Drawer and Acceptor.**

Liability to pay—maker.

(1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to Section 3-115 on incomplete instruments.

Drawer—dishonor and notice.

(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest

Disclaimer. he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

Admissions. (3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to indorse.

Section 3-414. **Contract of Indorser; Order of Liability.**

Liability of indorser. (1) Unless the indorsement otherwise specifies (as by such words as "without recourse") every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his indorsement to the holder or to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so.

Order of liability. (2) Unless they otherwise agree indorsers are liable to one another in the order in which they indorse, which is presumed to be the order in which their signatures appear on the instrument.

Section 3-415. **Contract of Accommodation Party.**

Accommodation party defined. (1) An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

Liability. (2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

Proof. (3) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

Notice. (4) An indorsement which shows that it is not in the chain of title is notice of its accommodation character.

Right of recourse. (5) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party.

Section 3-416. **Contract of Guarantor.**

"Payment guaranteed" defined. (1) "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

"Collection guaranteed" defined. (2) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

Words of guaranty. (3) Words of guaranty which do not otherwise specify guarantee payment.

Effect of words of guaranty. (4) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

Liability of user. (5) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

Enforcement. (6) Any guaranty written on the instrument is enforcible notwithstanding any statute of frauds.

Section 3-417. **Warranties on Presentment and Transfer.**

Warranties—presentment and transfer. (1) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that:

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith:

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith:

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of a draft with respect to an alteration made after the acceptance.

(2) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that:

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the instrument has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

"Without recourse."

(3) By transferring "without recourse" the transferor limits the obligation stated in subsection (2)(d) to a warranty that he has no knowledge of such a defense.

(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority.

Finality of payment or acceptance.

Section 3-418. **Finality of Payment or Acceptance.** Except for recovery of bank payments as provided in the Article on Bank Deposits and Collections (Article 4) and except for liability for breach of warranty on presentment under the preceding section, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment.

Section 3-419. **Conversion of Instrument; Innocent Representative.**

Conversion defined.

(1) An instrument is converted when:

(a) a drawee to whom it is delivered for acceptance refuses to return it on demand; or

(b) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or

(c) it is paid on a forged indorsement.

Measure of liability.

(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) the measure of liability is presumed to be the face amount of the instrument.

Liability to true owner.

(3) Subject to the provisions of this Act concerning restrictive indorsements a representative, including a depositary or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

Nonliability—restrictive indorsement.

(4) An intermediary bank or payor bank which is not a depositary bank is not liable in conversion solely by reason of the fact that proceeds of an item indorsed

restrictively (Sections 3-205 and 3-206) are not paid or applied consistently with the restrictive indorsement of an indorser other than its immediate transferor.

Part 5

Presentment, Notice of Dishonor and Protest

Section 3-501. **When Presentment, Notice of Dishonor, and Protest Necessary or Permissible.**

Presentment—necessity.

(1) Unless excused (Section 3-511) presentment is necessary to charge secondary parties as follows:

Acceptance.

(a) presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;

Payment.

(b) presentment for payment is necessary to charge any indorser;

Effect of nonpresentment.

(c) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in Section 3-502 (1) (b).

Notice of dishonor—necessity.

(2) Unless excused (Section 3-511):

(a) notice of any dishonor is necessary to charge any indorser;

(b) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in Section 3-502 (1)(b).

Protest of dishonor—necessity.

(3) Unless excused (Section 3-511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states and territories of the United States and the District of Columbia. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

Indorsement after maturity.

(4) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity.

Section 3-502. **Unexcused Delay; Discharge.**

Effect of unexcused delay—discharge.

(1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due:

(a) any indorser is discharged; and

(b) any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged.

Section 3-503. **Time of Presentment.**

Determination—time for presentment.

(1) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

(a) where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;

(b) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;

(c) where an instrument shows the date on which it is payable presentment for payment is due on that date;

(d) where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;

(e) with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

Determination—reasonable time.

(2) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

(a) with respect to the liability of the drawer, thirty days after date or issue whichever is later; and

(b) with respect to the liability of an endorser, seven days after his indorsement.

Due on full business day.

(3) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

Reasonable hour—banking day.

(4) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day.

Section 3-504. **How Presentment Made.**

Presentment defined.

(1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

Methods of making presentment—proper persons—bank.

(2) Presentment may be made:

(a) by mail in which event the time of presentment is determined by the time of receipt of the mail; or

(b) through a clearing house; or

(c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(3) It may be made:

(a) to any one of two or more makers, acceptors, drawees or other payors; or

(b) to any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(5) In the cases described in Section 4-210 presentment may be made in the manner and with the result stated in that section.

Section 3-505. **Rights of Party to Whom Presentment is Made.**

Rights of party to whom presentment is made.

(1) The party to whom presentment is made may without dishonor require:

(a) exhibition of the instrument; and

(b) reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and

(c) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and

(d) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

Compliance.

(2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance.

Section 3-506. **Time Allowed for Acceptance or Payment.**

Acceptance may be deferred.

(1) Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also in a good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

Payment may be deferred.

(2) Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment.

Section 3-507. **Dishonor; Holder's Right of Recourse; Term Allowing Re-Presentment.**

Dishonor defined.

(1) An instrument is dishonored when:

(a) a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (Section 4-301); or

(b) presentment is excused and the instrument is not duly accepted or paid.

Right of recourse.

(2) Subject to any necessary of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

Return—lack of indorsement.

(3) Return of an instrument for lack of proper indorsement is not dishonor.

Re-presentment—option to waive dishonor.

(4) A term in a draft or an indorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time.

Section 3-508. **Notice of Dishonor.**

Notice of dishonor—to whom and by whom.

(1) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

Time for notice.

(2) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

Form of notice.

(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

Written notice.

(4) Written notice is given when sent although it is not received.

Partner.

(5) Notice to one partner is notice to each although the firm has been dissolved.

Insolvency proceedings.

(6) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

Dead or incompetent.

(7) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

Operation.

(8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified.

Section 3-509. **Protest; Noting for Protest.**

Protest defined.

(1) A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

Terms.

(2) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

Notice.

(3) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

Time due.

(4) Subject to subsection (5) any necessary protest is due by the time that notice of dishonor is due.

Noted for protest.

(5) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting.

Evidence of dishonor and notice—effect.

Section 3-510. **Evidence of Dishonor and Notice of Dishonor.** The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

(a) a document regular in form as provided in the preceding section which purports to be a protest;

(b) the purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;

(c) any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry.

Section 3-511. **Waived or Excused Presentment, Protest or Notice of Dishonor or Delay Therein.**

Excused delay—presentment, protest, notice of dishonor.

(1) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(2) Presentment or notice or protest as the case may be is entirely excused when:

(a) the party to be charged has waived it expressly or by implication either before or after it is due; or

(b) such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or

(c) by reasonable diligence the presentment or protest cannot be made or the notice given.

(3) Presentment is also entirely excused when:

(a) the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or

(b) acceptance or payment is refused but not for want of proper presentment.

Later presentment.

(4) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

Waiver.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

Effect in instrument.

(6) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only.

Part 6
Discharge

Section 3-601. **Discharge of Parties.**

Discharge.

(1) The extent of the discharge of any party from liability on an instrument is governed by the sections on:

(a) payment or satisfaction (Section 3-603); or

(b) tender of payment (Section 3-604); or

(c) cancellation or renunciation (Section 3-605); or

(d) impairment of right of recourse or of collateral (Section 3-606); or

(e) reacquisition of the instrument by a prior party (Section 3-208); or

(f) fraudulent and material alteration (Section 3-407); or

(g) certification of a check (Section 3-411); or

(h) acceptance varying a draft (Section 3-412); or

(i) unexcused delay in presentment or notice of dishonor or protest (Section 3-502).

Agreement or act.

(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

Liability of all parties.

(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument:

(a) reacquires the instrument in his own right; or

(b) is discharged under any provision of this Article, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (Section 3-606).

Discharge does not affect holder in due course without notice.

Section 3-602. **Effect of Discharge Against Holder in Due Course.** No discharge of any party provided by this Article is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument.

Section 3-603. **Payment or Satisfaction.**

Payment or satisfaction—extent of discharge.

(1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability:

(a) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or

(b) of a party (other than an intermediary bank or a payor bank which is not a depositary bank) who pays or satisfies the holder of an instrument which has been restrictively indorsed in a manner not consistent with the terms of such restrictive indorsement.

Consent of holder.

(2) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (Section 3-201).

Section 3-604. **Tender of Payment.**

Tender of payment.

(1) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.

Refusal.

(2) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

Equivalent tender.

(3) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender.

Section 3-605. **Cancellation and Renunciation.**

Holder may discharge any party.

(1) The holder of an instrument may even without consideration discharge any party:

(a) in any manner apparent on the face of the instrument or the indorsement, as by intentionally cancelling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

(b) by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

Surrender of instrument.

(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto.

Section 3-606. **Impairment of Recourse or of Collateral.**

Impairment of recourse or collateral by holder—effect.

(1) The holder discharges any party to the instrument to the extent that without such party's consent the holder:

(a) without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right to enforce against such person the instrument or collateral or otherwise discharges such person, except that failure or delay in effecting any required presentment, protest or notice of dishonor with respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

(b) unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

Reservation of rights.

(2) By express reservation of rights against a party with a right of recourse the holder preserves:

(a) all his rights against such party as of the time when the instrument was originally due; and

(b) the right of the party to pay the instrument as of that time; and

(c) all rights of such party to recourse against others.

Part 7

Advice of International Sight Draft

Section 3-701. **Letter of Advice of International Sight Draft.**

"Letter of advice" defined.

(1) A "letter of advice" is a drawer's communication to the drawee that a described draft has been drawn.

Rights of recipient bank.

(2) Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the drawer's account and stop the running of interest pro tanto. Such a debit and any resulting credit to any account covering outstanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.

Duty to pay.

(3) Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the drawer's account.

Part 8

Miscellaneous

Section 3-801. **Drafts in a Set.**

Drafts in a set.

(1) Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

Rights of negotiator.

(2) Any person who negotiates, indorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

Order of payment.

(3) As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under subsection (2). With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order (Section 4-407).

Discharge.

(4) Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged.

Section 3-802. **Effect of Instrument on Obligation for Which It Is Given.**

Effect on underlying obligation.

(1) Unless otherwise agreed where an instrument is taken for an underlying obligation:

Discharge—pro tanto.

(a) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument

and there is no recourse on the instrument against the underlying obligor; and

Suspension—pro tanto.

(b) in any other case the obligation is suspended pro tanto until the instrument is due or of it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

Taking of check.

(2) The taking in good faith of a check which is not postdated does not of itself so extend the time on the original obligation as to discharge a surety.

Notice of litigation to answerable third party.

Section 3-803. **Notice to Third Party.** Where a defendant is sued for breach of an obligation for which a third person is answerable over under this Article he may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over to him under this Article. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the two litigations, then unless after seasonable receipt of the notice the person notified does come in and defend he is so bound.

Actions by owner—lost instruments.

Section 3-804. **Lost, Destroyed or Stolen Instruments.** The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument.

Application.

Section 3-805. **Instruments Not Payable to Order or to Bearer.** This Article applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this Article but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument.

ARTICLE 4

BANK DEPOSITS AND COLLECTIONS

Part 1

General Provisions and Definitions

Title—Uniform Commercial Code—Bank Deposits and Collections.

Section 4-101. **Short Title.** This Article shall be known and may be cited as Uniform Commercial Code —Bank Deposits and Collections.

Section 4-102. **Applicability.**

Application—other provisions.

(1) To the extent that items within this Article are also within the scope of Articles 3 and 8, they are subject to the provisions of those Articles. In the event of conflict the provisions of this Article govern those of Article 3 but the provisions of Article 8 govern those of this Article.

Liability—law of place of bank or branch governs.

(2) The liability of a bank for action or non-action with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

Section 4-103. **Variation by Agreement; Measure of Damages; Certain Action Constituting Ordinary Care.**

Variation by agreement.

(1) The effect of the provisions of this Article may be varied by agreement except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

Effect of rules and regulations.

(2) Federal Reserve regulations and operating letters, clearing house rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

Prima facie evidence—ordinary care.

(3) Action or non-action approved by this Article or pursuant to Federal Reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing house rules and the like or with a general banking usage not disapproved by this Article, prima facie constitutes the exercise of ordinary care.

Other reasonable procedures.

(4) The specification or approval of certain procedures by this Article does not constitute disapproval of other procedures which may be reasonable under the circumstances.

Measure of damages.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any, suffered by the party as a proximate consequence.

Definitions:

Section 4-104. **Definitions and Index of Definitions.**

(1) In this Article unless the context otherwise requires:

"Account."

(a) "Account" means any account with a bank and includes a checking, time, interest or savings account;

"Afternoon."

(b) "Afternoon" means the period of a day between noon and midnight;

"Banking day."

(c) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;

"Clearing house."

(d) "Clearing house" means any association of banks or other payors regularly clearing items;

"Customer."

(e) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank;

"Documentary draft."

(f) "Documentary draft" means any negotiable or non-negotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;

"Item."

(g) "item" means any instrument for the payment of money even though it is not negotiable but does not include money;

"Midnight deadline."

(h) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

"Properly payable."

(i) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;

"Settle."

(j) "Settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final;

"Suspends payments."

(k) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

Index to definitions.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Collecting bank". Section 4-105.
"Depositary bank". Section 4-105.
"Intermediary bank". Section 4-105.
"Payor bank". Section 4-105.
"Presenting bank". Section 4-105.
"Remitting bank". Section 4-105.

(3) The following definitions in other Articles apply to this Article:

"Acceptance". Section 3-410.
"Certificate of deposit". Section 3-104.
"Certification". Section 3-411.
"Check". Section 3-104.
"Draft". Section 3-104.
"Holder in due course". Section 3-302.
"Notice of dishonor". Section 3-508.
"Presentment". Section 3-504.
"Protest". Section 3-509.
"Secondary Party". Section 3-102.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Section 4-105. **"Depositary Bank"; "Intermediary Bank"; "Collecting Bank"; "Payor Bank"; "Presenting Bank"; "Remitting Bank".** In this Article unless the context otherwise requires:

"Depositary bank." (a) "Depositary bank" means the first bank to which an item is transferred for collection even though it is also the payor bank;

"Payor bank." (b) "Payor bank" means a bank by which an item is payable as drawn or accepted;

"Intermediary bank." (c) "Intermediary bank" means any bank to which an item is transferred in course of collection except the depositary or payor bank;

"Collecting bank." (d) "Collecting bank" means any bank handling the item for collection except the payor bank;

"Presenting bank." (e) "Presenting bank" means any bank presenting an item except a payor bank;

"Remitting bank." (f) "Remitting bank" means any payor or intermediary bank remitting for an item.

Branch is separate bank for computation of time. Section 4-106. **Separate Office of a Bank** A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this Article and under Article 3.

Section 4-107. **Time of Receipt of Items.**

Bank may fix cut-off hour. (1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its poistion for the day, a bank may fix an afternoon hour of two P. M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

Receipt after cut-off. (2) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

Section 4-108. **Delays.**

Collecting bank may waive time. (1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this Act for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

Delay excused. (2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this Act or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require.

Section 4-109. **Process of Posting.**

Process of "posting" defined. The "process of posting" means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

(a) verification of any signature;

(b) ascertaining that sufficient funds are available;

(c) affixing a "paid" or other stamp;

(d) entering a charge or entry to a customer's account;

(e) correcting or reversing an entry or erroneous action with respect to the item.

Part 2

Collection of Items: Depositary and Collecting Banks

Section 401. **Presumption and Duration of Agency Status of Collecting Banks and Provisional Status of Credits; Applicability of Article; Item Indorsed "Pay Any Bank."**

Collecting bank is agent of owner. (1) Unless a contrary intent clearly appears and prior to the time that a settlement given by a collecting bank for an item is or becomes final (subsection (3) of Section

4-211 and Sections 4-212 and 4-213) the bank is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and valid rights of setoff. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of this Article apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

Bank as holder after indorsement "Pay any bank."

(2) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder:

(a) until the item has been returned to the customer initiating collection; or

(b) until the item has been specially indorsed by a bank to a person who is not a bank.

Section 4-202. **Responsibility for Collection; When Action Seasonable.**

Responsibility of collecting bank.

(1) A collecting bank must use ordinary care in:

(a) presenting an item or sending it for presentment; and

(b) sending notice of dishonor or non-payment or returning an item other than a documentary draft to the bank's transferor or directly to the depositary bank under subsection (2) of Section 4-212 after learning that the item has not been paid or accepted, as the case may be; and

(c) settling for an item when the bank receives final settlement; and

(d) making or providing for any necessary protest; and

(e) notifying its transferor of any loss or delay in

transit within a reasonable time after discovery thereof.

Seasonable action.

(2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.

Nonliability of collecting bank.

(3) Subject to subsection (1)(a), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others.

Effect of instructions by transferor.

Section 4-203. **Effect of Instructions.** Subject to the provisions of Article 3 concerning conversion of instruments (Section 3-419) and the provisions of both Article 3 and this Article concerning restrictive indorsements only a collecting bank's transferor can give instructions which affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor.

Section 4-204. **Methods of Sending and Presenting; Sending Direct to Payor Bank.**

Methods of sending and presenting—authority of collecting bank.

(1) A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items.

(2) A collecting bank may send:

(a) any item direct to the payor bank;

(b) any item to any non-bank payor if authorized by its transferor; and

(c) any item other than documentary drafts to any non-bank payor, if authorized by Federal Reserve regulation or operating letter, clearing house rule or the like.

Place of presentment.

(3) Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made.

Section 4-205. **Supplying Missing Indorsement; No Notice From Prior Indorsement.**

Depositary bank may supply indorsement.

(1) A depositary bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words "payee's indorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depositary bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's indorsement.

Effect—restrictive indorsement.

(2) An intermediary bank, or payor bank which is not a depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor.

Transfer between banks.

Section 4-206. **Transfer Between Banks.** Any agreed method which identifies the transferor bank is sufficient for the item's further transfer to another bank.

Section 4-207. **Warranties of Customer and Collecting Bank on Transfer or Presentment of Items; Time for Claims.**

Warranties of customer, collecting bank to payor.

(1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that:

(a) he has a good title to the item or is authoirzed to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith:

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith:

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of an item with respect to an alteration made after the acceptance.

Warranties to transferee.

(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that:

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the item has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.

Take up on dishonor.

In addition each customer and colecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

Liability for breach.

(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwith-

standing the absence of indorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

Measure of damages.

Discharge.

(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim.

Section 4-208. **Secutrity Interest of Collecting Bank in Items, Accompanying Documents and Proceeds.**

Bank has security interest.

(1) A bank has a security interest in an item and any accompanying documents or the proceeds of either:

(a) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;

(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

(c) if it makes an advance on or against the item.

Scope of security interest.

(2) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

Final settlement.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of Article 9 except that:

(a) no security agreement is necessary to make the security interest enforceable (subsection (1)(b) of Section 9-203); and

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

Bank as holder in due course.

Section 4-209. **When Bank Gives Value for Purposes of Holder in Due Course.** For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of Section 3-302 on what constitutes a holder in due course.

Section 4-210. **Presentment by Notice of Item Not Payable by, Through or at a Bank; Liability of Secondary Parties.**

Collection by written notice—time.

(1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under Section 3-505 by the close of the bank's next banking day after it knows of the requirement.

Dishonor—time—notice to secondary party.

(2) Where presentment is made by notice and neither honor nor request for compliance with a requirement under Section 3-505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts.

Section 4-211. **Media of Remittance; Provisional and Final Settlement in Remittance Cases.**

Authorized media of settlement.

(1) A collecting bank may take in settlement of an item:

(a) a check of the remitting bank or of another bank on any bank except the remitting bank; or

(b) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank; or

(c) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

(d) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

Dishonor—time—liability to prior parties.

(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.

Effect of final settlement.

(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement:

(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the istrument or authorization, —at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

(b) if the person receiving the settlement has authorized remittance by a non-bank check or obligation or by cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsetion (1)(b),—at the time of the receipt of such remittance check or obligation; or

(c) if in a case covered by sub-paragraph (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline,—at such midnight deadline.

Section 4-212. **Right of Charge-Back or Refund.**

Revocation of settlement—charge back—refund.

(1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge-back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (subsection (3) of Section 4-211 and subsections (2) and (3) of Section 4-213).

Draft—unpaid item—reimbursement.

(2) Within the time and manner prescribed by this section and Section 4-301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depositary bank and may send for collection a draft on the depositary bank and obtain reimbursement. In such case, if the depositary bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.

Rights of depositary payor bank.

(3) A depositary bank which is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (Section 4-301).

Right to charge back not affected.

(4) The right to charge-back is not affected by:

(a) prior use of the credit given for the item; or

(b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

Failure to charge back or claim refund.

(5) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

Computation of credit—foreign currency.

(6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency the dollar amount of any charge-back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

Section 4-213. **Final Payment of Item by Payor Bank; When Provisional Debits and Credits Become Final; When Certain Credits Become Available for Withdrawal.**

Final payment defined.

(1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

(a) paid the item in cash; or

(b) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or

(c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or

(d) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing house rule or agreement.

Upon a final payment under subparagraphs (b), (c), or (d) the payor bank shall be accountable for the amount of the item.

Accounting—provisional settlement becomes final.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

Bank's accountability.

(3) If a collecting bank receives a settlement for an item which is or becomes final (subsection (3) of Section 4-211, subsection (2) of Section 4-213) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

Credit to customer—right of withdrawal.

(4) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right:

(a) in any case where the bank has received a provisional settlement for the item,—when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final;

(b) in any case where the bank is both a depositary bank and a payor bank and the item is finally paid,—at the opening of the bank's second banking day following receipt of the item.

Deposit final when made—withdrawal.

(5) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit.

Section 4-214. **Insolvency and Preference.**

Return of unpaid item.

(1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

Preferred claim against payor bank.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

Effect of suspended payment after provisional settlement.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of

certain time or the happening of certain events (subsection (3) of Section 4-211, subsections (1)(d), (2) and (3) of Section 4-213).

Preferred claim against collecting bank.

(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank.

Part 3

Collection of Items: Payor Banks

Section 4-301. **Deferred Posting; Recovery of Payment by Return of Items; Time of Dishonor.**

Payor bank may revoke settlement of demand item.

(1) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (subsection (1) of Section 4-213) and before its midnight deadline it:

(a) returns the item; or

(b) sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return.

Recovery on demand item.

(2) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

Time of dishonor.

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

Return defined.

(4) An item is returned:

(a) as to an item received through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with its rules; or

(b) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions.

Payor bank accountable for late return.

Section 4-302. **Payor Bank's Responsibility for Late Return of Item.** In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of Section 4-207), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of:

(a) a demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(b) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents.

Section 4-303. **When Items Subject to Notice, Stop-Order, Legal Process or Setoff; Order in Which Items May be Charged or Certified.**

Limitation on effect of notice, stop order, process, set-off.

(1) Any knowledge, notice or stop-order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend or modify such right or duty if the knowledge, notice, stop-order or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:

Acts of payor bank.

(a) accepted or certified the item;

(b) paid the item in cash;

(c) settled for the item without reserving a right to revoke the settlement and without having such

right under statute, clearing house rule or agreement;

(d) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or

(e) become accountable for the amount of the item under subsection (1) (d) of Section 4-213 and Section 4-302 dealing with the payor bank's responsibility for late return of items.

Order of items.

(2) Subject to the provisions of subsection (1) items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank.

Part 4

Relationship Between Payor Bank and Its Customer

Section 4-401. **When Bank May Charge Customer's Acount.**

Rights of bank to charge customer's account.

(1) As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.

(2) A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to:

(a) the original tenor of his altered item; or

(b) The tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

Payor bank liable to customer for wrongful dishonor.

Section 4-402. **Bank's Liability to Customer for Wrongful Dishonor.** A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited ot actual damages

proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

Section 4-403. **Customer's Right to Stop Payment; Burden of Proof of Loss.**

Right of customer to stop payment.

(1) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in Section 4-303.

Oral order.

(2) An oral order is binding upon the bank only for fourteen calendar days unless confirmed in writing within that period. A written order is effective for only six months unless renewed in writing.

Burden of proof.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer.

No obligation to pay check six months old.

Section 4-404. **Bank Not Obligated to Pay Check More Than Six Months Old.** A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

Section 4-405. **Death of Incompetence of Customer.**

Bank's authority not revoked until notice of incompetency or death.

(1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

Section 4-406. **Customer's Duty to Discover and Report Unauthorized Signature or Alteration.**

Duty of customer to report irregularities.

(1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

Effect of failure to report.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) the customer is precluded from asserting against the bank:

(a) his unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) an unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding fourteen calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.

Exception—bank's lack of care.

(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

Time limitations.

(4) Without regard to care or lack of care of either the customer or the bank a customer who does not within one year from the time the statement and items are made available to the customer (subsection (1)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within three years from that time discover and report any

unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

Waiver of defense.

(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim.

Section 4-407. **Payor Bank's Right to Subrogation on Improper Payment.** If a payor bank has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights:

Payor bank has subrogation rights.

(a) of any holder in due course on the item against the drawer or maker; and

(b) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(c) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

Part 5

Collection of Documentary Drafts

Section 4-501. **Handling of Documentary Drafts; Duty to Send for Presentment and to Notify Customer of Dishonor.** A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its cutsomer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

Duties of bank taking documentary draft.

Section 4-502. **Presentment of "On Arrival" Drafts.** When a draft or the relevant instructions require pre-

Duty of bank—arrival of goods.

sentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

Section 4-503. **Responsibility of Presenting Bank for Documents and Goods; Report of Reasons for Dishonor; Referee in Case of Need.** Unless otherwise instructed and except as provided in Article 5 a bank presenting a documentary draft:

Duty on acceptance.

(a) must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

Duty on dishonor.

(b) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its efforts to ascertain the reasons therefor and must request instructions. But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses.

Section 4-504. **Privilege of Presenting Bank to Deal With Goods; Security Interest for Expenses.**

(1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

Presenting bank may deal with goods.

Bank's lien.

(2) For its reasonable expenses incurred by action

under subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

ARTICLE 5

LETTERS OF CREDIT

Section 5-101. **Short Title.** This Article shall be known and may be cited as Uniform Commercial Code—Letters of Credit.

Title—Uniform Commercial Code—Letters of Credit.

Section 5-102. **Scope.**

(1) This Article applies:

Scope of article.

(a) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and

(b) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(c) to a credit issued by a bank or other person if the credit is not within subparagraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(2) Unless the engagement meets the requirements of subsection (1), this Article does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

Exclusions.

(3) This Article deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this act or may hereafter develop. The fact that this Article states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this Article.

Application.

Section 5-103. **Definitions.**

(1) In this Article unless the context otherwise requires:

Definitions:

(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the re-

"Credit." "Letter of credit."

quest of a customer and of a kind within the scope of this Article (Section 5-102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

"Documentary draft." "Documentary demand for payment." "Document."

(b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

"Issuer."

(c) An "issuer" is a bank or other person issuing a credit.

"Beneficiary."

(d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.

"Advising bank."

(e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

"Confirming bank."

(f) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

"Customer."

(g) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

Index to definitions.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Notation of Credit". Section 5-108.
"Presenter". Section 5-112(3).

(3) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Accept" or "Acceptance". Section 3-410.
"Contract for sale". Section 2-106.
"Draft". Section 3-104.
"Holder in due course". Section 3-302.
"Midnight deadline". Section 4-104.
"Security". Section 8-102.

(4) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Section 5-104. **Formal Requirements; Signing.**

Formal requirements—credit, confirmation, modification.

(1) Except as otherwise required in subsection (1)(c) of Section 5-102 on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

Telegram.

(2) A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing.

No consideration necessary.

Section 5-105. **Consideration.** No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms.

Section 5-106. **Time and Effect of Establishment of Credit.**

Credit established—time.

(1) Unless otherwise agreed a credit is established:

(a) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(b) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

Consent to modification, revocation—customer, beneficiary.

(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

Modification—revocation—by issuer.

(3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.

Right to Reimbursement.

(4) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer.

Section 5-107. **Advice of Credit; Confirmation; Error in Statement of Terms.**

Obligations—advising bank.

(1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

Confirming bank.

(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

Error—original terms.

(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

Risk of customer.

(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit.

Section 5-108. **"Notation Credit"; Exhaustion of Credit.**

"Notation of credit" defined.

(1) A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a "notation of credit".

Effect.

(2) Under a notation credit:

(a) a person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a

person warrants to the issuer that the notation has been made; and

(b) unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding thirty days to obtain such evidence.

Effect if not a notation credit—order of honoring.

(3) If the credit is not a notation credit:

(a) the issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand;

Priority of rights.

(b) as between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored.

Section 5-109. **Issuer's Obligation to Its Customer.**

Obligations of issuer to customer.

(1) An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liablility or responsibility:

(a) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

(b) for any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or

(c) based on knowledge or lack of knowledge of any usage of any particular trade.

Examination by issuer

(2) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for the genuineness,

falsification or effect of any document which appears on such examination to be regular on its face.

Non-bank issuer.

(3) A non-bank issuer is not bound by any banking usage of which it has no knowledge.

Section 5-110. **Availability of Credit in Portions; Presenter's Reservation of Lien or Claim.**

Use in portions.

(1) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

Relinquishment of claims.

(2) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand non-complying.

Section 5-111. **Warranties on Transfer and Presentment.**

Warranty of beneficiary.

(1) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under Articles 3, 4, 7 and 8.

Warranty of bank.

(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under Article 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under Articles 7 and 8.

Section 5-112. **Time Allowed for Honor or Rejection; Withholding Honor or Rejection by Consent; "Presenter".**

Time for honor or rejection.

(1) A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand or credit:

(a) defer honor until the close of the third banking day following receipt of the documents; and

(b) further defer honor if the presenter has expressly or impliedly consented thereto.

Dishonor.

Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit.

Return.

(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

"Presenter" defined.

(3) "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization.

Section 5-113. **Indemnities.**

Bank may give indemnity—effect—expiration.

(1) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an idemnity to induce such honor, negotiation or reimbursement.

(2) An idemnity agreement inducing honor, negotiation or reimbursement:

(a) unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

(b) unless a longer time is explicitely agreed expires at the end of ten business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline.

Section 5-114. **Issuer's Duty and Privilege to Honor; Right to Reimbursement.**

Duty of issuer to honor draft or demand for payment.

(1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or de-

mand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

Rights of issuer to honor.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (Section 7-507) or of a security (Section 8-306) or is forged or fraudulent or there is fraud in the transaction:

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (Section 3-302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (Section 7-502) or a bona fide purchaser of a security (Section 8-302); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

Right to reimbursement.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

Section 5-115. **Remedy for Improper Dishonor or Anticipatory Repudiation.**

Remedy for wrongful dishonor.

(1) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (Section 2-707) and may recover from the issuer the face amount

of the draft or demand together with incidental damages under Section 2-710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

Remedy for anticipatory repudiation.

(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under Section 2-610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor.

Section 5-116. **Transfer and Assignment.**

Transfer and assignment.

(1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

Beneficiary may assign right to proceeds.

(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of a contract right under Article 9 on Secured Transactions and is governed by that Article except that:

(a) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under Article 9; and

(b) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(c) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit.

Section 5-117. **Insolvency of Bank Holding Funds for Documentary Credit.**

Insolvency of bank before final payment—allocation.

(1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this Article is made applicable by paragraphs (a) or (b) of Section 5-102(1) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and

(b) on expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and

(c) a charge to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

Right to documents.

(2) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved.

ARTICLE 6

BULK TRANSFERS

Section 6-101. **Short Title.** This Article shall be known and may be cited as Uniform Commercial Code—Bulk Transfers.

Title—Uniform Commercial Code—Bulk Transfers.

Section 6-102. **"Bulk Transfer"; Transfers of Equipment; Enterprises Subject to This Article; Bulk Transfers Subject to This Article.**

"Bulk transfer" defined.

(1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (Section 9-109) of an enterprise subject to this Article.

Transfer of equipment.

(2) A transfer of a substantial part of the equipment (Section 9-109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

Scope.

(3) The enterprises subject to this Article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

Subject transfers.

(4) Except as limited by the following section all bulk transfers of goods located within this state are subject to this Article.

Excluded transfers.

Section 6-103. **Transfers Excepted From This Article.** The following transfers are not subject to this Article:

(1) Those made to give security for the performance of an obligation;

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(3) Transfers in settlement or realization of a lien or other security interests;

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of

a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(6) Transfers to a person maintaining a known place of business in this state who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which is exempt from execution.

Notice—publication.

Public notice under subsection (6) or subsection (7) may be given by publishing once a week for two consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in this state an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer.

Section 6-104. **Schedule of Property, List of Creditors.**

Requirements against creditor of transferor.

(1) Except as provided with respect to auction sales (Section 6-108), a bulk transfer subject to this Article is ineffective against any creditor of the transferor unless:

List of creditors.

(a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

Schedule of property.

(b) The parties prepare a schedule of the property transferred sufficient to identify it; and

Inspection—filing.

(c) The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the county clerk and recorder of the county of residence of the transferor, and also in the office of the county clerk and recorder of the

county in which the property transferred is located at the time of transfer.

Form of list.

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

Transferor's responsibility.

(3 Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

Notice of transfer against creditors.

Section 6-105. **Notice to Creditors.** In addition to the requirements of the preceeding section, any bulk transfer subject to this Article except one made by auction sale (Section 6-108) is ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (Section 6-107).

Section 6-106. **Application of the Proceeds.** In addition to the requirements of the two preceding sections:

Duty of transferee—payment of debts from proceeds.

(1) Upon every bulk transfer subject to this Article for which new consideration becomes payable except those made by sale at auction it is the duty of the transferee to assure that such consideration is applied so far as necessary to pay those debts of the transferor which are either shown on the list furnished by the transferor (Section 6-104) or filed in writing in the place stated in the notice (Section 6-107) within thirty days after the mailing of such notice. This duty of the transferee runs to all the holders of such debts, and may be enforced by any of them for the benefit of all.

Disputed debts.

(2) If any of said debts are in dispute the necessary sum may be withheld from distribution until the dispute is settled or adjudicated.

Pro rata distribution.

(3) If the consideration payable is not enough to pay all of the said debts in full distribution shall be made pro rata.

Deposit in court.

(4) The transferee may within ten days after he takes possession of the goods pay the consideration into the District Court in the county where the transferor had its principal place of business in this state and thereafter may discharge his duty under this section by giving notice by registered or certified mail to all the persons to whom the duty runs that the consideration has been paid into that court and that they should file their claims there. On motion of any interested party, the court may order the distribution of the consideration to the persons entitled to it.

Section 6-107. **The Notice.**

Requirements—notice to creditors.

(1) The notice to creditors (Section 6-105 shall state:

(a) that a bulk transfer is about to be made; and

(b) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee; and

(c) whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(a) the location and general description of the property to be transferred and the estimated total of the transferor's debts;

(b) the address where the schedule of property and list of creditors (Section 6-104) may be inspected;

(c) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(d) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment; and

(e) if for new consideration the time and place where creditors of the transferor are to file their claims.

Service of notice.

(3) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (Section 6-104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.

Section 6-108. **Auction Sales; "Auctioneer".**

Bulk transfer by auction sale.

(1) A bulk transfer is subject to this Article even though it is by sale at auction, but only in the manner and with the results stated in this section.

List of creditors—schedule of property.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (Section 6-104).

"Auctioneer" defined—duties.

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:

(a) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this Article (Section 6-104);

(b) give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor; and

(c) assure that the net proceeds of the auction are applied as provided in this Article (Section 6-106).

Liability of auctioneer.

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds

of the auction. If the auctioneer consists of several persons their liability is joint and several.

Section 6-109. **What Creditors Protected; Credit for Payment to Particular Creditors.**

Creditors defined.

(1) The creditors of the transferor mentioned in this Article are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (Sections 6-105 and 6-107) are not entitled to notice.

Right to credit for sums paid.

(2) Against the aggregate obligation imposed by the provisions of this Article concerning the application of the proceeds (Section 6-106 and subsection (3)(c) of 6-108) the transferee or auctioneer is entitled to credit for sums paid to particular creditors of the transferor, not exceeding the sums believed in good faith at the time of the payment to be properly payable to such creditors.

Subsequent transfers.

Section 6-110. **Subsequent Transfers.** When the title of a transferee to property is subject to a defect by reason of his non-compliance with the requirements of this Article, then:

Notice of noncompliance.

(1) a purchaser of any such property from such transferee who pays no value or who takes with notice of such non-compliance takes subject to such defect, but

Purchaser without notice.

(2) a purchaser for value in good faith and without such notice takes free of such defect.

Limitations of actions and levies.

Section 6-111. **Limitation of Actions and Levies.** No action under this Article shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within six months after its discovery.

ARTICLE 7

WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

Part 1

General

Title—Uniform Commercial Code—Documents of Title.

Section 7-101. **Short Title.** This Article shall be

known and may be cited as Uniform Commercial Code—Documents of Title.

Definitions:

Section 7-102. **Definitions and Index of Definitions.**

(1) In this Article, unless the context otherwise requires:

"Bailee."

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

"Consignee."

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

"Consignor."

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

"Delivery order."

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

"Document."

(e) "Document" means document of title as defined in the general definitions in Article 1 (Section 1-201).

"Goods."

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

"Issuer."

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

"Warehouseman."

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

Index to definitions.

(2) Other definitions applying to this Article or to

specified Parts thereof, and sections in which they appear are:

"Duly negotiate". Section 7-501.
"Person entitled under the document". Section 7-403(4).

(3) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Contract for sale". Section 2-106.
"Overseas". Section 2-323.
"Receipt" of goods. Section 2-103.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Subject to applicable law.

Section 7-103. **Relation of Article to Treaty, Statute, Tariff, Classification or Regulation.** To the extent that any treaty or statute of the United States, regulatory statute of this State or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this Article are subject thereto.

Section 7-104. **Negotiable and Non-Negotiable Warehouse Receipt, Bill of Lading or Other Document of Title.**

Negotiable document defined.

(1) A warehouse receipt, bill of lading or other document of title is negotiable:

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

Non-negotiable documents.

(2) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person.

Construction.

Section 7-105. **Construction Against Negative Implication.** The omission from either Part 2 or Part 3 of this Article of a provision corresponding to a provision made in the other Part does not imply that a corresponding rule of law is not applicable.

Part 2

Warehouse Receipts: Special Provisions

Section 7-201. **Who May Issue a Warehouse Receipt; Storage Under Government Bond.**

Issue—warehouse receipt.

(1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman.

Section 7-202. **Form of Warehouse Receipt; Essential Terms; Optional Terms.**

Form.

(1) A warehouse receipt need not be in any particular form.

Required terms—liability for damages.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) the rate of storage and handling charges, except where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;

(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouseman, which may be made by his authorized agent;

(h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in

common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (Section 7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

Other terms.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this Act and do not impair his obligation of delivery (Section 7-403) or his duty of care (Section 7-204). Any contrary provisions shall be ineffective.

Liability for non-receipt or misdescription.

Section 7-203. **Liability for Non-Receipt or Misdescription.** A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantiny or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice.

Section 7-204. **Duty of Care; Contractual Limitation of Warehouseman's Liability.**

Warehouseman's duty of care.

(1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

Damages may be limited by written terms.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount

of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

Other reasonable provisions.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

Title acquired by buyer.

Section 7-205. **Title Under Warehouse Receipt Defeated in Certain Cases.** A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

Section 7-206. **Termination of Storage at Warehouseman's Option.**

Warehouseman's option—termination of storage—notice.

(1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (Section 7-210).

Sale as on lien.

Deteriorating goods—notice—public sale.

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification

any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at a public sale held not less than one week after a single advertisement or posting.

Hazard—sale without notice—disposal.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

Delivery on demand.

(4) The warehouseman must deliver the goods to any person entitled to them under this Article upon due demand made at any time prior to sale or other disposition under this section.

Disposition—proceeds of sale.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods.

Section 7-207. **Goods Must Be Kept Separate; Fungible Goods.**

Duty to keep goods separate.

(1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled

Fungible goods—commingling—liability.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

Altered warehouse receipt.

Section 7-208. **Altered Warehouse Receipts.** Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and

without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.

Section 7-209. **Lien of Warehouseman.**

Warehouseman's lien.

(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman"s lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

Security interest.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the Article on Secured Transactions (Article 9).

Scope of lien.

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under Section 7-503.

Loss of lien.

(4) A warehouseman loses his lien on any goods

which he voluntarily delivers or which he unjustifiably refuses to deliver.

Section 7-210. **Enforcement of Warehouseman's Lien.**

Enforcement—notice—sale.

(1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceeding sentence.

Enforcement—other goods—notice—sale.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

Person claiming interest may pay lien.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this Article.

Warehouseman may purchase.

(4) The warehouseman may buy at any public sale pursuant to this section.

Title of purchaser.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

Application of proceeds.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

Additional rights.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

Enforcement—lien on goods stored by merchant.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

Scope of liability.

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

Part 3

Bills of Lading: Special Provisions

Section 7-301. **Liability for Non-Receipt or Misdescription; "Said to Contain"; "Shipper's Load and Count"; Improper Handling.**

Remedies—consignee of non-negotiable bill of lading.

(1) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the non-receipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

Duties of common carrier.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

Bulk freight.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

Liability of issuer.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of

like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

Shipper's indemnity.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

Section 7-302. **Through Bills of Lading and Similar Documents.**

Liability of issuer of through bill of lading.

(1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

Obligation of person in possession of goods.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

Right of action in issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required

to pay anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor.

Section 7-303. **Diversion; Reconsignment; Change of Instructions.**

Carrier's right to deliver goods.

(1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from:

(a) the holder of a negotiable bill; or

(b) the consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee; or

(c) the consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possesion of the bill; or

(d) the consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.

Effect of instructions on negotiable bill.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

Section 7-304. **Bills of Lading in a Set.**

Separate issue.

(1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

Lawful issue in parts constitutes one bill.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

Title of holder of part of set.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

Liability—transferor of single part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

Duty of bailee to deliver.

(5) The bailee is obliged to deliver in accordance with Part 4 of this Article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill.

Section 7-305. **Destination Bills.**

Destination bills.

(1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

Substitute bill.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

Section 7-306. **Altered Bills of Lading.** An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor. Effect of unauthorized alteration.

Section 7-307. **Lien of Carrier.**

Carrier's lien.

(1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

Scope.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the con-

signor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

Loss of lien.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

Section 7-308. **Enforcement of Carrier's Lien.**

Enforcement—notice—sale.

(1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

Person claiming interest may pay lien.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this Article.

Carrier may purchase.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

Application of proceeds.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

Additional rights.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

Procedure.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of Section 7-210.

Scope of liability.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

Section 7-309. **Duty of Care; Contractual Limitation of Carrier's Liability.**

Carrier's duty of care.

(1) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

Damages may be limited by agreement.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

Other reasonable terms.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based

on the shipment may be included in a bill of lading or tariff.

Part 4

Warehouse Receipts and Bills of Lading General Obligations

Scope of obligations—irregularities.

Section 7-401. **Irregularities in Issue of Receipt or Bill or Conduct of Issuer.** The obligations imposed by this Article on an issuer apply to a document of title regardless of the fact that:

(a) the document may not comply with the requirements of this Article or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

Effect of duplicate receipt or bill.

Section 7-402. **Duplicate Receipt or Bill; Overissue.** Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face.

Section 7-403. **Obligation of Warehouseman or Carrier to Deliver; Excuse.**

Obligation to deliver goods.

(1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) the exercise by a seller of his right to stop delivery pursuant to the provisions of the Article on Sales (Section 2-705);

(e) a diversion, reconsignment or other disposition pursuant to the provisions of this Article (Section 7-303) or tariff regulating such right;

(f) release, satisfaction or any other fact affording a personal defense against the claimant;

(g) any other lawful excuse.

Satisfaction of lien.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

Surrender of documents.

(3) Unless the person claiming is one against whom the document confers no right under Sec. 7-503 (1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable ot any person to whom the document is duly negotiated.

"Person entitled under document" defined.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a non-negotiable document.

Bailee not liable for good faith delivery.

Section 7-404. **No Liability for Good Faith Delivery Pursuant to Receipt or Bill.** A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this Article is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them.

Part 5

Warehouse Receipts and Bills of Lading; Negotiation and Transfer

Section 7-501. **Form of Negotiation and Requirements of "Due Negotiation".**

Negotiation—effect of delivery of document.

(1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer;

(b) when a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

Indorsement.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

"Duly negotiated" defined.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

Indorsement—non-negotiable document.

(5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights.

Naming of person to be notified.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

Section 7-502. **Rights Acquired by Due Negotiation.**

Title of holder after negotiation—rights.

(1) Subject to the following section and to the provisions of Section 7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this Article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

Scope.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

Section 7-503. **Document of Title to Goods Defeated in Certain Cases.**

Defeat of document of title—conditions.

(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

(a) delivered or entursted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this Article (Section 7-403) or with power of disposition under this Act (Sections 2-403 and 9-307) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.

Title to goods—unaccepted delivery order.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

Title to goods—bill of lading issued by forwarder.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Part 4 of this Article pursuant to its own bill of lading discharges the carrier's obligation to deliver.

Section 7-504. **Rights Acquired in the Absence of Due Negotiation; Effect of Diversion; Seller's Stoppage of Delivery.**

Title and rights—transferee.

(1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

Rights of transferee may be defeated.

(2) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:

(a) by those creditors of the transferor who could treat the sale as void under Section 2-402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

Defeat of consignee's title—diversion.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

Stop order by seller.

(4) Delivery pursuant to a non-negotiable document may be stopped by a seller under Section 2-705, and

subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

Bailee's right to indemnity.

Indorser not a guarantor.

Section 7-505. **Indorser Not a Guarantor for Other Parties.** The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers.

Right to require indorsement.

Section 7-506. **Delivery Without Indorsement: Right to Compel Indorsement.** The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied.

Warranties to transferee or purchaser.

Section 7-507. **Warranties on Negotiation or Transfer of Receipt or Bill.** Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods:

(a) that the document is genuine; and

(b) that he has no knowledge of any fact which would impair it validity or worth; and

(c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

Warranties of collecting bank.

Section 7-508. **Warranties of Collecting Bank as to Documents.** A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

Adequacy of document.

Section 7-509. **Receipt or Bill: When Adequate Compliance With Commercial Contract.** The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is gov-

erned by the Articles on Sales (Article 2) and on Letters of Credit (Article 5).

Part 6

Warehouse Receipts and Bills of Lading: Miscellaneous Provisions

Section 7-601. **Lost and Missing Documents.**

Court procedure—lost, stolen of destroyed documents.

(1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

Liability of bailee—delivery without court order.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after delivery.

No lien attaches unless negotiable document be surrendered.

Section 7-602. **Attachment of Goods Covered by a Negotiable Document.** Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

Conflicting claims.

Section 7-603. **Conflicting Claims; Interpleader.** If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, whichever is appropriate.

ARTICLE 8

INVESTMENT SECURITIES

Part 1

Short Title and General Matters

Title—Uniform Commercial Code—Investment Securities.

Section 8-101. **Short Title.** This Article shall be known and may be cited as Uniform Commercial Code—Investment Securities.

Definitions:

Section 8-102. **Definitions and Index of Definitions.**

(1) In this Article unless the context otherwise requires:

"Security."

(a) A "security" is an instrument which:

(i) is issued in bearer or registered form; and

(ii) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(iii) is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(iv) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

Application of law.

(b) A writing which is a security is governed by this Article and not by Uniform Commercial Code —Commercial Paper even though it also meets the requirements of that Article. This Article does not apply to money.

"Registered form." (c) A security is in "registered form" when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

"Bearer form." (d) A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any indorsement.

"Subsequent purchaser." (2) A "subsequent purchaser" is a person who takes other than by original issue.

"Clearing corporation." (3) A "clearing corporation" is a corporation all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934.

"Custodian bank." (4) A "custodian bank" is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

Index to definitions. (5) Other definitions applying to this Article or to specified Parts thereof and the sections in which they appear are:

"Adverse claim". Section 8-301.
"Bona fide purchaser". Section 8-302.
"Broker". Section 8-303.
"Guarantee of the signature". Section 8-402.
"Intermediary Bank". Section 4-105.
"Issuer". Section 8-201.
"Overissue". Section 8-104.

(6) In addition Article 1 contains general definitions and principles of construction and niterpretation applicable throughout this Article.

Issuer's lien—notation on security. Section 8-103. **Issuer's Lien.** A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security.

Section 8-104. **Effect of Overissue; "Overissue."**

Effect of overissue—rights of purchaser. (1) The provisions of this Article which validate a securiyt or compel its issue or reissue do not apply to the

extent that validation, issue or reissue would result in overissue; but:

(a) if an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issue to purchase and deliver such a security to him against surrender of the security, if any, which he holds; or

(b) if a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

"Overissue" defined. (2) "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue.

Section 8-105. **Securities Negotiable; Presumptions.**

Securities negotiable. (1) Securities governed by this Article are negotiable instruments.

Action on security—admissions. (2) In any action on a security:

(a) unless specifically denied in the pleading, each signature on the security or in a necessary indorsement is admitted;

Burden of establishing signature. (b) when the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

Recovery. (c) when signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and

Defense.

Burden of refuting defense. (d) after it is shown that a defense or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (Section 8-202).

Application of law. Section 8-106. **Applicability.** The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (includ-

ing the conflict of laws rules) of the jurisdiction of organization of the issuer.

Section 8-107. **Securities Deliverable; Action for Price.**

Right to deliver securities.

(1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or indorsed to him or in blank.

Seller's remedies.

(2) When the buyer fails to pay the price as it comes due under a contract of sale the seller may recover the price:

(a) of securities accepted by the buyer; and

(b) of other securities if efforts at their resale would be unduly murdensome or if there is no readily available market for their resale.

Part 2

Issue - Issuer

Section 8-201. **"Issuer."**

"Issuer" defined.

(1) With respect to obligations on or defenses to a security "issuer" includes a person who:

(a) places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security; or

(b) directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced by securities; or

(c) becomes responsible for or in place of any other person described as an issuer in this section.

Guarantor as issuer.

(2) With respect to obligations on or defenses to a security a guarantor is an issuer to the extent of his guaranty whether or not his obligation is noted on the security.

Issuer's transfer books.

(3) With respect to registration of transfer (Part 4 of this Article) "issuer" means a person on whose behalf transfer books are maintained.

Section 8-202. **Issuer's Responsibility and Defenses; Notice of Defect or Defense.**

Terms of security—reference—notice.

(1) Even against a purchaser for value and without notice, the terms of a security include those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a constitution, statute, ordinance, rule, regulation, order or the like to the extent that the terms so referred to do not conflict with the stated terms. Such a reference does not of itself charge a purchaser for value with notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.

Validity—purchaser for value without notice.

(2) (a) A security other than one issued by a government or governmental agency or unit even though issued with a defect going to its validity is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in the hands of a subsequent purchaser for value and without notice of the defect.

Government issuer—compliance.

(b) The rule of subparagraph (a) applies to an issuer which is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

Lack of genuineness—complete defense.

(3) Except as otherwise provided in the case of certain unauthorized signatures on issue (Section 8-205), lack of genuineness of a security is a complete defense even against a purchaser for value and without notice.

Other defenses.

(4) All other defenses of the issuer including nondelivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defense.

Construction—right to cancel.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which such security is to be issued or distributed.

Section 8-203. **Staleness as Notice of Defects or Defenses.**

Purchaser charged with notice—staleness.

(1) After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer:

(a) if the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and

(b) if the act or event is not covered by paragraph (a) and he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

(2) A call which has been revoked is not within subsection (1).

Restriction on transfer—notation on security.

Section 8-204. **Effect of Issuer's Restrictions on Transfer.** Uuless noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it.

Effect of unauthorized signature.

Section 8-205. **Effect of Unauthorized Signature on Issue.** An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favor of a purchaser for value and without notice of the lack of authority if the signing has been done by:

(a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with

the signing of the security or of similar securities or their immediate preparation for signing; or

(b) an employee of the issuer or of any of the foregoing entrusted with responsible handling of the security.

Section 8-206. **Completion or Alteration of Instrument.**

Completion of blanks.

(1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

Altered security.

(2) A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms.

Section 8-207. **Rights of Issuer With Respect to Registered Owners.**

Effect of registration.

(1) Prior to due presentment for registration of transfer of a security in registered form the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.

Liability of registered owner.

(2) Nothing in this Article shall be construed to affect the liability of the registered owner of a security for calls, assesments or the like.

Section 8-208. **Effect of Signature of Authenticating Trustee, Registrar or Transfer Agent.**

Warranties of authenticating signer.

(1) A person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that:

(a) the security is genuine and in proper form; and

(b) his own participation in the issue of the security is within his capacity and within the scope of

the authorization received by him from the issuer; and

(c) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

Validity.

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects.

Part 3

Purchase

Section 8-301. **Rights Acquired by Purchaser; "Adverse Claim"; Title Acquired by Bona Fide Purchaser.**

Rights acquired by purchase.

(1) Upon delivery of a security the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

"Adverse claim."

Bona fide purchaser's rights.

(2) A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

Limited interest.

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

"Bona fide purchaser" defined.

Section 8-302. "**Bona Fide Purchaser.**" A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank.

"Broker" defined.

Section 8-303. "**Broker.**" "Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, or buys a security from or sells a security to a customer. Nothing in this Article determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject.

Section 8-304. **Notice to Purchaser of Adverse Claims.**

Purchaser charged with notice of adverse claims—conditions.

(1) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a security is charged with notice of adverse claims if:

(a) the security whether in bearer or registered form has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

Duty of inquiry.

(2) The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or for some other purpose not involving transfer; or inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

Purchaser charged with notice—staleness.

Section 8-305. **Staleness as Notice of Adverse Claims.** An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase:

(a) after one year from any date set for such presentment or surrender for redemption or exchange; or

(b) after six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

Section 8-306. **Warranties on Presentment and Transfer.**

Warranties—person presenting.

(1) A person who presents a security for registration of transfer or for payment or exchange warrants to the

issuer that he is entitled to the registration, payment or exchange. But a purchaser for value without notice of adverse claims who receives a new, reissued or reregistered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature (Section 8-311) in a necessary indorsement.

Purchaser for value without notice.

Transferor.

(2) A person by transferring a security to a purchaser for value warrants only that:

(a) his transfer is effective and rightful; and

(b) the security is genuine and has not been materially altered; and

(c) he knows no fact which might impair the validity of the security.

Intermediary.

(3) Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

Pledgee or holder for security.

(4) A pledgee or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection (3).

Broker.

Agent.

(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

Right of purchaser to indorsement.

Section 8-307. **Effect of Delivery Without Indorsement; Right to Compel Indorsement.** Where a security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

Section 8-308. **Indorsement, How Made; Special Indorsement; Indorser Not a Guarantor; Partial Assignment.**

Form of indorsement.

(1) An indorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

Blank or special.

(2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

Holder may convert to special indorsement.

"Appropriate person" defined.

(3) "An appropriate person" in subsection (1) means:

(a) the person specified by the security or by special indorsement to be entitled to the security; or

(b) where the person so specified is described as a fiduciary but is no longer serving in the described capacity, — either that person or his successor; or

(c) where the security or indorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity,—the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified; or

(d) where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise,—his executor, administrator, guardian or like fiduciary; or

(e) where the security or indorsement so specified more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign,—the survivor or survivors; or

(f) a person having power to sign under applicable law or controlling instrument; or

(g) to the extent that any of the foregoing persons may act through an agent,—his authroized agent.

Obligation of indorser.

(4) Unless otherwise agreed the indorser by his indorsement assumes no obligation that the security will be honored by the issuer.

Effect of indorsement of part.

(5) An indorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

Determination of appropriate person.

(6) Whether the person signing is appropriate is determined as of the date of signing and an indorsement by such a person does not become unauthorized for the purposes of this Article by virtue of any subsequent change of circumstances.

Non-compliance of fiduciary—effect of indorsement.

(7) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his indorsement unauthorized for the purposes of this Article.

Transfer on delivery after indorsement.

Section 8-309. **Effect of Indorsement Without Delivery.** An indorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the indorsement is on a separate document until delivery of both the document and the security.

Notice of adverse claims by indorsement.

Section 8-310. **Indorsement of Security in Bearer Form.** An indorsement of a security in bearer form may give notice of adverse claims (Section 8-304) but does not otherwise affect any right to registration the holder may possess.

Rights of owner—unauthorized indorsement.

Section 8-311. **Effect of Unauthorized Indorsement.** Unless the owner has ratified an unauthorized indorsement or is otherwise precluded from asserting its ineffectiveness:

Ineffectiveness.

(a) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or re-registered security on registration of transfer; and

Liability of issuer—improper registration.

(b) an issuer who registers the transfer of a security upon the unauthorized indorsement is subject to

liability for improper registration (Section 8-404).

Section 8-312. **Effect of Guaranteeing Signature or Indorsement.**

Warranties—guarantor of signature.

(1) Any person guaranteeing a signature of an indorser of a security warrants that at the time of signing:

(a) the signature was genuine; and

(b) the signer was an appropriate person to indorse (Section 8-308); and

(c) the signer had legal capacity to sign.

But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

Guarantor of indorsement.

(2) Any person may guarantee an indorsement of a security and by so doing warrants not only the signature (subsection 1) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of indorsement as a condition to registration of transfer.

Liability of guarantor.

(3) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties.

Section 8-313. **When Delivery to the Purchaser Occurs; Purchaser's Broker as Holder.**

Delivery to purchaser.

(1) Delivery to a purchaser occurs when:

(a) he or a person designated by him acquires possession of a security; or

(b) his broker acquires possession of a security specially indorsed to or issued in the name of the purchaser; or

(c) his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or

(d) with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or

(e) appropriate entries on the books of a clearing corporation are made under Section 8-320.

Purchaser as owner.

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in subparagraphs (b), (c) and (e) of subsection (1). Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

Notice of adverse claim after delivery.

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.

Section 8-314. **Duty to Deliver, When Completed.**

Completion of duty to deliver.

(1) Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers:

(a) the selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or if requested causes an acknowledgment to be made to the selling broker that it is held for him; and

(b) the selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

Transferor's duty to deliver security in negotiable form.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him. Unless made on an exchange

a sale to a broker purchasing for his own account is within this subsection and not within subsection (1).

Section 8-315. **Action Against Purchaser Based Upon Wrongful Transfer.**

Remedies for wrongful transfer.

(1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this Article on unauthorized indorsements (Section 8-311).

(3) The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation.

Transferor's proof of authority—demand.

Section 8-316. **Purchaser's Right to Requisites for Registration of Transfer on Books.** Unless otherwise agreed the transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with a demand within a reasonable time gives the purchaser the right to reject or rescind the transfer.

Section 8-317. **Attachment or Levy Upon Security.**

Attachment or levy.

(1) No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source.

Creditor's right to court aid.

(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate

jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

Liability of agent or bailee.

Section 8-318. **No Conversion by Good Faith Delivery.** An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal has no right to dispose of them.

Statute of frauds.

Section 8-319. **Statute of Frauds.** A contract for the sale of securities is not enforceable by way of action or defense unless:

(a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

(b) delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph (a) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ten days after its receipt; or

(d) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

Section 8-320. **Transfer or Pledge within a Central Depository System.**

Transfer or pledge—book entry.

(1) If a security:

(a) is in custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(b) is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(c) is shown on the account of a transferor or pledgor on the books of the clearing corporation;

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

Form of entries.

(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

Effect of book entry.

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly indorsed in blank (Section 8-301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (Sections 9-304 and 9-305). A transferee or pledgee under this section is a holder.

Registration.

(4) A transfer or pledge under this section does not constitute a registration of transfer under Part 4 of this Article.

Obligations.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

Part 4

Registration

Section 8-401. **Duty of Issuer to Register Transfer.**

Duty of issuer to register transfer.

(1) Where a security in registered form is presented to the issuer with a request ot register transfer, the issuer is under a duty to register the transfer as requested if:

(a) the security is indorsed by the appropriate person or persons (Section 8-308); and

(b) reasonable assurance is given that those indorsements are genuine and effective (Section 8-402); and

(c) the issuer has no duty to inquire into adverse claims or has discharged any such duty (Section 8-403); and

(d) any applicable law relating to the collection of taxes has been complied with; and

(e) the transfer is in fact rightful or is to a bona fide purchaser.

Liability of issuer.

(2) Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer.

Section 8-402. **Assurance That Indorsements Are Effective.**

Issuer may require assurances.

(1) The issuer may require the following assurance that each necessary indorsement (Section 8-308) is genuine and effective:

(a) in all cases, a guarantee of the signature (subsection (1) of Section 8-312) of the person indorsing; and

(b) where the indorsement is by an agent, appropriate assurance of authority to sign;

(c) where the indorsement is by a fiduciary, appropriate evidence of appointment or incumbency;

(d) where there is more than one fiduciary, reasonable assurance that all who are required to sign have done so;

(e) where the indorsement is by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

"Guarantee of the signature" defined.

(2) A "guarantee of the signature" in subsection (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility provided such standards are not manifestly unreasonable.

"Appropriate evidence of appointment or incumbency" defined.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) means:

(a) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the date of presentation for transfer; or

(b) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such evidence provided such standards are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

Issuer may require additional reasonable assurances.

(4) The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in subsection 3(b) both requires and obtains a copy of a will, trust, indenture, articles of co-partnership, bylaws or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer.

Section 8-403. **Limited Duty of Inquiry.**

Duty of issuer to inquire into adverse claims.

(1). An issuer to whom a security is presented for registration is under a duty to inquire into adverse claims if:

(a) a written notification of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or re-registered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(b) the issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of Section 8-402.

Discharge of duty—reasonable means.

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from the date of mailing the notification, either:

(a) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

(b) an idemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved, from any loss which it or they may suffer by complying with the adverse claim is filed with the issuer.

Limitations—issuer's duty to inquire.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of Section 8-402 or receives notification of an adverse claim under subsection (1) of this section, where a security presented for registration is endorsed by the appropriate person

or persons the issuer is under no duty to inquire into adverse claims. In particular:

(a) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) an issuer registering transfer on an endorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement of a fiduciary to the fiduciary himself or to his nominee.

Section 8-404. **Liability and Non-Liability for Registration.**

Liability of issuer.

(1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if:

(a) there were on or with the security the necessary indorsements (Section 8-308); and

(b) the issuer had no duty to inquire into adverse claims or has discharged any such duty (Section 8-403).

(2) Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless:

(a) the registration was pursuant to subsection (1); or

(b) the owner is precluded from asserting any claim for registering the transfer under subsection (1) of the following section; or

(c) such delivery would result in overissue, in which case the issuer's liability is governed by Section 8-104.

Section 8-405. **Lost, Destroyed and Stolen Securities.**

Lost, destroyed, stolen securities—notice to issuer.

(1) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving such a notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under the preceding section or any claim to a new security under this section.

Substitution.

(2) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new security in place of the original security if the owner:

(a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser; and

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies any other reasonable requirements imposed by the issuer.

Presentation of original by bona fide purchaser.

(3) If, after the issue of the new security, a bona fide purchaser of the original security presents it for registration of transfer, the issuer must register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by Section 8-104. In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom it was issued or any person taking under him except a bona fide purchaser.

Section 8-406. **Duty of Authenticating Trustee, Transfer Agent or Registrar.**

Duty of authenticating agent for issuer.

(1) Where a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities:

(a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(b) he has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.

Effect of notice.

(2) Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent.

ARTICLE 9

SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

Part 1

Short Title, Applicability and Definitions

Title—Uniform Commercial Code—Secured Transactions.

Section 9-101. **Short Title.** This Article shall be known and may be cited as Uniform Commercial Code—Secured Transactions.

Section 9-102. **Policy and Scope of Article.**

Application of law—personal property and fixtures.

(1) Except as otherwise provided in Section 9-103 on multiple state transactions and in Section 9-104 on excluded transactions, this Article applies so far as concerns any personal property and fixtures within the jurisdiction of this State:

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also

(b) to any sale of accounts, contract rights or chattel paper.

Security interests created by contract.

(2) This Article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This Article does not apply to statutory liens except as provided in Section 9-310.

Effect.

(3) The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply.

Section 9-103. **Accounts, Contract Rights, General Intangibles and Equipment Relating to Another Jurisdiction; and Incoming Goods Already Subject to a Security Interest.**

Scope of law.

(1) If the office where the assignor of accounts or contract rights keeps his records concerning them is in this state, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this Article; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located.

(2) If the chief place of business of a debtor is in this state, this Article governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this state.

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into this state, the validity

of the security interest in this state is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in this state and it was brought into this state within 30 days after the security interest attached for purposes other than transportation through this state, then the validity of the security interest in this state is to be determined by the law of this state. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, the security interest continues perfected in this state for four months and also thereafter if within the four month period it is perfected in this state. The security interest may also be perfected in this state after the expiration of the four month period; in such case perfection dates from the time of perfection in this state. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, it may be perfected in this state; in such case perfection dates from the time of perfection in this state.

(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which requires indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

Exclusions from law.

Section 9-104. **Transactions Excluded From Article.** This Article does not apply:

(a) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) to a landlord's lien; or

(c) to a lien given by statute or other rule of law for

services or materials except as provided in Section 9-310 on priority of such liens; or

(d) to a transfer of a claim for wages, salary or other compensation of an employee; or

(e) to an equipment trust covering railway rolling stock; and

(f) to a sale of accounts, contract rights or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts, contract rights or chattel paper which is for the purpose of collection only, or a transfer of a contract right to an assignee who is also to do the performance under the contract; or

(g) to a transfer of an interest or claim in or under any policy of insurance; or

(h) to a right represented by a judgment; or

(i) to any right of set-off; or

(j) except to the extent that provision is made for fixtures in Section 9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(k) to a transfer in whole or in part of any of the following: any claim arising out of tort; any deposit, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization.

Section 9-105. **Definitions and Index of Definitions.**

Definitions:

(1) In this Article unless the context otherwise requires:

"Account debtor."

(a) "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general intangible;

"Chattel paper."

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a

series of instruments, the group of writings taken together constitutes chattel paper;

"Collateral."

(c) "Collateral" means the property subject to a security interest, and includes accounts, contract rights and chattel paper which have been sold;

"Debtor."

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, contract rights or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the Article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

"Document."

(e) "Document" means document of title as defined in the general definitions of Article 1 (Section 1-201);

"Goods."

(f) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (Section 9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. "Goods" also include the unborn young of animals and growing crops;

"Instrument."

(g) "Instrument" means a negotiable instrument (defined in Section 3-104), or a security (defined in Section 8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

"Security agreement."

(h) "Security agreement" means an agreement which creates or provides for a security interest;

"Secured party."

(i) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of

trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

Index to definitions.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Account". Section 9-106.
"Consumer goods". Section 9-109(1).
"Contract right". Section 9-106.
"Equipment". Section 9-109(2).
"Farm products". Section 9-109(3).
"General intangibles". Section 9-106.
"Inventory". Section 9-301(3).
"Lien creditor". Section 9-301(3).
"Proceeds". Section 9-306(1).
"Purchase money security interest". Section 9-107.

(3) The following definitions in other Articles apply to this Article:

"Check". Section 3-104.
"Contract for sale". Section 2-106.
"Holder in due course". Section 3-302.
"Note". Section 3-104.
"Sale". Section 2-106.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

"Account."

"Contract right."

"General intangibles."

Section 9-106. **Definitions: "Account"; "Contract Right"; "General Intangibles".** "Account means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. "Contract right" means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper. "General intangibles" means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments.

"Purchase money security interest."

Section 9-107. Definitions: **"Purchase Money Security Interest".** A security interest is a "purchase money security interest" to the extent that it is:

(a) taken or retained by the seller of the collateral to secure all or part of its price; or

(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

After acquired collateral not security for antecedent debt

Section 9-108. **When After-Acquired Collateral Not Security for Antecedent Debt.** Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

Section 9-109. **Classification of Goods; "Consumer Goods"; "Equipment"; "Farm Products"; "Inventory".** Goods are:

"Consumer goods."

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

"Equipment."

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

"Farm products."

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

"Inventory."

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

Sufficiency of description.

Section 9-110. **Sufficiency of Description.** For the purposes of this Article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

Application of law.

Section 9-111. **Applicability of Bulk Transfer Laws.** The creation of a security interest is not a bulk transfer under Article 6.

Rights of collateral owner who is not debtor.

Section 9-112. **Where Collateral Is Not Owned by Debtor.** Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under Section 9-502(2) or under Section 9-504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor:

(a) to receive statements under Section 9-208;

(b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under Section 9-505;

(c) to redeem the collateral under Section 9-506;

(d) to obtain injunctive or other relief under Section 9-507(1); and

(e) to recover losses caused to him under Section 9-208(2).

Application of law—security interests under sales.

Section 9-113. **Security Interests Arising Under Article on Sales.** A security interest arising solely under the Article on Sales (Article 2) is subject to the provisions of this Article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods:

(a) no security agreement is necessary to make the security interest enforceable; and

(b) no filing is required to perfect the security interest; and

(c) the rights of the secured party on default by the debtor are governed by the Article on Sales (Article 2).

Part 2

Validity of Security Agreement and Rights of Parties Thereto

General validity of security agreement.

Section 9-201. **General Validity of Security Agreement.** Except as otherwise provided by this Act a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this Article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

Title to collateral immaterial.

Section 9-202. **Title to Collateral Immaterial.** Each provision of this Article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

Section 9-203. **Enforceability of Security Interest; Proceeds, Formal Requisites.**

Enforceability.

(1) Subject to the provisions of Section 4-208 on the security interest of a collecting bank and Section 9-113 on a security interest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties unless:

Possession of collateral.

(a) the collateral is in the possession of the secured party; or

Debtor's signature—description.

(b) the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing collateral, the word "proceeds" is sufficient without further description to cover proceeds of any character.

"Proceeds" sufficient.

Application—other statutes.

(2) A transaction although subject to this Article, is also subject to Chapter 2 of Title 47 of the Revised Codes of Montana, 1947, as enacted by Chapter 283, Laws of Montana 1959, to Chapter 6 of Title 74 of the Revised Codes of Montana, 1947, as enacted by Chapter 282, Laws of Montana 1959, and to Sections 52-319 to 52-323, in-

clusive, Chapter 1 of Title 53, and Chapter 16 of Title 66, of the Revised Codes of Montana, 1947, as amended, and in the case of conflict between the provisions of this Article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

Section 9-204. **When Security Interest Attaches; After-Acquired Property; Future Advances.**

Security interest agreement—value—debtor's rights in collateral.

(1) A security interest cannot attach until there is agreement (subsection (3) of Section 1-201) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

(2) For the purposes of this section the debtor has no rights:

(a) in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;

(b) in fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;

(c) in a contract right until the contract has been made;

(d) in an account until it comes into existence.

After acquired collateral.

(3) Except as provided in subsection (4) a security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement.

Exceptions.

(4) No security interest attaches under an after-acquired property clause:

Crops.

(a) to crops which become such more than one year after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed or trust may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction;

Consumer goods.

(b) to consumer goods other than accessions (Section 9-314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

Future advances—other value.

(5) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment.

Section 9-205. **Use or Disposition of Collateral Without Accounting Permissible.** A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts, contract rights or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

Debtor's use of collateral permissible.

Section 9-206. **Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties Where Security Agreement Exists.**

Enforceability—agreement not to assert defenses against assignee.

(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Article on Commercial Paper (Article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

Application—purchase money security interest.

(2) When a seller retains a purchase money security interest in goods the Article on Sales (Article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

Section 9-207. **Rights and Duties When Collateral Is in Secured Party's Possession.**

Duty of secured party holding collateral.

(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

Rights of secured party holding collateral.

(2) Unless otherwise agreed, when collateral is in the secured party's possession:

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

Liability.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

Secured party's right to use collateral

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

Section 9-208. **Request for Statement of Account or List of Collateral.**

Debtor's right to approval—statement of indebtedness—list of collateral.

(1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

Duty to comply.

(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

Liability.

Disclosure of successor.

Statement every six months.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding $10 for each additional statement furnished.

Part 3

Rights of Third Parties; Perfected and Unperfected Security Interests; Rules of Priority

Section 9-301. **Persons Who Take Priority Over Unperfected Security Interests; "Lien Creditor".**

Priority over unperfected security interests.

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:

(a) persons entitled to priority under Section 9-312;

(b) a person who becomes a lien creditor without knowledge of the security interest and before it is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts, contract rights, and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

Filing—priority of secured party.

(2) If the secured party files with respect to a purchase money security interest before or within ten days after the collateral comes into possession of the debtor, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

"Lien creditor" defined.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. Unless all the creditors represented had knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest.

Section 9-302. **When Filing is Required to Perfect Security Interest; Security Interests to Which Filing Provisions of This Article Do Not Apply.**

Financing statement.

(1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under Section 9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under

Section 9-304 or in proceeds for a 10 day period under Section 9-306;

(c) a purchase money security interest in farm equipment having a purchase price not in excess of $2500; but filing is required for a fixture under Section 9-313 or for a motor vehicle required to be licensed;

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under Section 9-313 or for a motor vehicle required to be licensed;

(e) an assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;

(f) a security interest of a collecting bank (Section 4-208) or arising under the Article on Sales or covered in subsection (3) of this section.

Assignment.

(2) If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

Application—other statutes.

(3) The filing provisions of this Article do not apply to a security interest in property subject to a statute:

(a) of the United States which provides for a national registration or filing of all security interests in such property; or

(b) of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.

Security interests perfected under other statutes.

(4) A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.

Section 9-303. **When Security Interest Is Perfected; Continuity of Perfection.**

Perfection—conditions.

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in Sections 9-302, 9-304, 9-305 and 9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

Perfection deemed continuous.

(2) If a security interest is originally perfected in any way permitted under this Article and is subsequently perfected in some other way under this Article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Article.

Section 9-304. **Perfection of Security Interest in Instruments, Documents and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.**

Perfection by filing—possession.

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5).

Security interest in document—possession in issuer.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

Perfection—possession in bailee.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of th secured party's interest or by filing as to the goods.

Perfection without filing or possession—21 days.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

Conditions—21-day period.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having

a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange; or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

Perfection after 21-day period.

(6) After the 21 day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this Article.

Section 9-305. **When Possession by Secured Party Perfects Security Interest Without Filing.** A security interest in letters of credit and advices of credit (subsection (2)(a) of Section 5-116), goods, instruments, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receivs notification of the secured party's interest. A security interest is perfected by possssion from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party.

Perfection by possession of collateral.

Section 9-306. **"Proceeds"; Secured Party's Rights on Disposition of Collateral.**

"Proceeds."

(1) "Proceeds" includes whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks and the like are "cash proceeds". All other proceeds are "non-cash proceeds".

"Cash proceeds."

Continuation—security interest in collateral proceeds.

(2) Except where this Article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof by the debtor unless his action was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

Security interest in proceeds—10-day period.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless:

(a) a filed financing statement covering the original collateral also covers proceeds; or

(b) the security interest in the proceeds is perfected before the expiration of the ten day period.

Insolvency proceedings—perfected security interest.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest:

(a) in identifiable non-cash proceeds;

(b) in identifiable cash proceeds in the form of money which is not commingled with other money or deposited in a bank account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a bank account prior to the insolvency proceedings; and

(d) in all cash and bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account, but the perfected security interest under this paragraph (d) is

(i) subject to any right of set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the

debtor and paid over to the secured party during the ten day period.

Priority rules—repossession by seller or secured party.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under Section 9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

Section 9-307. **Protection of Buyers of Goods.**

Title—buyer in ordinary course of business except farm products.

(1) A buyer in ordinary course of business (subsection (9) of Section 1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

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Consumer goods and farm equipment.

(2) In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of $2500 (other than fixtures, see Section 9-313), a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods.

Priorities—purchase of chattel paper and non-negotiable instruments.

Section 9-308. **Purchase of Chattel Paper and Non-Negotiable Instruments.** A purchaser of chattel paper or a non-negotiable instrument who gives new value and takes possession of it in the ordinary course of his business and without knowledge that the specific paper or instrument is subject to a security interest has priority over a security interest which is perfected under Section 9-304 (permissive filing and temporary perfection). A purchaser of chattel paper who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in chattel paper which is claimed merely as proceeds of inventory subject to a security interest (Section 9-306), even though he knows that the specific paper is subject to the security interest.

Rights of purchasers not limited.

Section 9-309. **Protection of Purchasers of Instruments and Documents.** Nothing in this Article limits the rights of a holder in due course of a negotiable instrument (Section 3-302) or a holder to whom a negotiable document of title has been duly negotiated (Section 7-501) or a bona fide purchaser of a security (Section 8-301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Article does not constitute notice of the security interest to such holders or purchasers.

Priority of materialman's lien.

Section 9-310. **Priority of Certain Liens Arising by Operation of Law.** When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

Transfer of debtor's rights in collateral.

Section 9-311. **Alienability of Debtor's Rights: Judicial Process.** The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

Priorities—conflicting security interests in same collateral.

Section 9-312. **Priorities Among Conflicting Security Interests in the Same Collateral.**

(1) The rules of priority stated in the following sections shall govern where applicable: Section 4-208 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; Section 9-301 on certain priorities; Section 9-304 on goods covered by documents; Section 9-306 on proceeds and repossessions; Section 9-307 on buyers of goods; Section 9-308 on possessory against non-possessory interests in chattel paper or non-negotiable instruments; Section 9-309 on security interests in negotiable instruments, documents or securities; Section 9-310 on priorities between perfected security interests and liens by operation of law; Section 9-313 on security interests in fixtures as against interests in real estate; Section 9-314 on security interests in accessions as against interest in goods; Section 9-315 on conflicting security interests where goods lose their identity or become part of a product; and Section 9-316 on contractual subordination.

Crops.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

Purchase money—inventory collateral.

(3) A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral if:

(a) the purchase money security interest is perfected

at the time the debtor receives possession of the collateral; and

(b) any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory, has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and

(c) such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

Purchase money—other collateral.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

Determination of priority—other cases.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined as follows:

(a) in the order of filing if both are perfected by filing, regardless of which security interest attached first under Section 9-204(1) and whether it attached before or after filing;

(b) in the order of perfection unless both are perfected by filing, regardless of which security interest attached first under Section 9-204(1) and, in the case of a filed security interest, whether it attached before or after filing; and

(c) in the order of attachment under Section 9-204(1) so long as neither is perfected.

(6) For the purpose of the priority rules of the immediately preceding subsection, a continuously perfected

security interest shall be treated at all times as if perfected by filing if it was originally so perfected and it shall be treated at all times as if perfected otherwise than by filing if it was originally perfected otherwise than by filing.

Section 9-313. **Priority of Security Interests in Fixtures.**

Application—fixtures as part of structure.

(1) The rules of this section do not apply to goods incorporated into a structure in the manner of lumber, bricks, tile, cement, glass, metal work and the like and no security interest in them exists under this Article unless the structure remains personal property under applicable law. The law of this state other than this Act determines whether and when other goods become fixtures. This Act does not prevent creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate.

Goods before becoming fixtures.

(2) A security interest which attaches to goods before they become fixtures takes priority as to the goods over the claims of all persons who have an interest in the real estate except as stated in subsection (4).

Goods after becoming fixtures.

(3) A security interest which attaches to goods after they become fixtures is valid against all persons subsequently acquiring interests in the real estate except as stated in subsection (4) but is invalid against any person with an interest in the real estate at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as fixtures.

Limitations.

(4) The security interests described in subsections (2) and (3) do not take priority over:

(a) a subsequent purchaser for value of any interest in the real estate; or

(b) a creditor with a lien on the real estate subsequently obtained by judicial proceedings; or

(c) a creditor with a prior encumbrance of record on the real estate to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings is obtained, or the subsequent advance un-

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der the prior encumbrance is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the real estate at a foreclosure sale other than an encumbrancer purchasing at his own foreclosure sale is a subsequent purchaser within this section.

Rights of secured party—obligations.

(5) When under subsections (2) or (3) and (4) a secured party has priority over the claims of all persons who have interests in the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

Accessions.

Section 9-314. **Accessions.**

Goods before installation.

(1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to Section 9-315(1).

Goods after installation.

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

Limitations.

(3) The security interests described in subsections (1) and (2) do not take priority over:

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

Subsequent purchaser defined.

Rights of secured party—obligations.

(4) When under subsection (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of Part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

Section 9-315. **Priority When Goods Are Commingled or Processed.**

Priority after goods are commingled.

(1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if:

(a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under Section 9-314.

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Equal interests—ratio.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

Subordination by agreement.

Section 9-316. **Priority Subject to Subordination.** Nothing in this Article prevents subordination by agreement by any person entitled to priority.

Nonliability of secured party.

Section 9-317. **Secured Party Not Obligated on Contract of Debtor.** The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

Section 9-318. **Defenses Against Assignee; Modification of Contract After Notification of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment.**

Limitations on rights of assignee.

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in Section 9-206 the rights of an assignee are subject to:

(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

Modification or substitution.

(2) So far as the right to payment under an assigned contract right has not already become an account, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

Authority to pay.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the account has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

Effect of prohibiting assignment.

(4) A term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties is ineffective.

Part 4

Filing

Section 9-401. **Place of Filing; Erroneous Filing; Removal of Collateral.**

Place of filing to perfect security interest.

(1) The proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is equipment used in farming operations, or farm products, or accounts, contract rights or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the county clerk and recorder in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk and recorder in the county where the goods are kept, and in addition when the collateral is crops in the office of the county clerk and recorder in the county where the land on which the crops are growing or to be grown is located;

(b) when the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

(c) in all other cases, in the office of the Secretary of State.

Effect of improper filing.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this Article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

Effect of debtor's change of address.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

Collateral brought into Montana.

(4) If collateral is brought into this state from another jurisdiction, the rules stated in Section 9-103 determine whether filing is necessary in this state.

Section 9-402. **Formal Requisites of Financing Statement; Amendments.**

Formal requisites—financing statement—sufficiency.

(1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

Signatures.

(2) A financing statement which otherwise complies with subsection (1) is sufficient although it is signed only by the secured party when it is filed to perfect a security interest in:

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state. Such a financing statement must state that the collateral was brought into this state under such circumstances.

(b) proceeds under Section 9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

Form.

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) .....

Address .....

Name of secured party (or assignee) .....

Address .....

1. This financing statement covers the following types (or items) of property:
   (Describe) .....
2. (If collateral is crops) The above described crops are growing or are to be grown on:
   (Describe Real Estate) .....
3. (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to:
   (Describe Real Estate) .....
4. (If proceeds or products of collateral are claimed) Proceeds—Products of the collateral are also covered.

Signature of Debtor (or Assignor) .....

Signature of Secured Party (or Assignee) .....

"Financing statement" defined

(4) The term "financing statement" as used in this Article means the original financing statement and any amendments but if any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment.

Effect of errors.

(5) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

Section 9-403. **What Constitutes Filing; Duration of Filing; Effect of Lapsed Filing; Duties of Filing Officer.**

Presentation and tender of fee constitutes filing.

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the state-

ment by the filing officer constitutes filing under this Article.

Effect of maturity date—lapse.

(2) A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until such maturity date and thereafter for a period of sixty days. Any other filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such sixty day period after a stated maturity date or on the expiration of such five year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demend is effective for five years from the date of filing.

Continuation statement—requirements.

(3) A continuation statement may be filed by the secured party (i) within six months before and sixty days after a stated maturity date of five years or less, and (ii) otherwise within six months prior to the expiration of the five year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

Duties of filing officer.

(4) A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

Fees.

(5) If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing, and furnishing filing data for an original or a continuation statement shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing, indexing and furnishing filing date for an original or a continuation statement shall be one dollar ($1.00), except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such original or continuation statement.

Section 9-404. **Termination Statement.**

Duty of secured party—termination statement.

(1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement thereof shall be one dollar ($1.00), except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such assignment or statement. If the affected secured party fails to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure.

Fees.

Liability.

Duties of filing officer.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark "terminated" and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto.

Fees.

(3) If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing and index-

ing a termination statement including sending or delivering the financing statement shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing and indexing a termination statement including sending or delivering the financing statement shall be one dollar ($1.00), except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such termination statement.

Section 9-405. **Assignment of Security Interest; Duties of Filing Officer; Fees.**

Financing statement may disclose assignment.

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in Section 9-403(4). If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing, indexing and furnishing filing date for a financing statement so indicating an assignment shall be one dollar ($1.00), except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such statement.

Assignment of record.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be one dollar ($1.00), except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such statement.

Duties of filing officer.

Fees.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

Assignee—secured party of record.

Section 9-406. **Release of Collateral; Duties of Filing Officer; Fees.** A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing and noting such a statement of release shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing and noting such a statement of release shall be one dollar ($1.00), except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such statement.

Signed statement may release all or part of collateral.

Duties of filing officer.

Fees.

Section 9-407. **Information From Filing Officer.**

Right to information on copy.

(1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

Filing officer's certificate.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be one dollar ($1.00) plus thirty cents (30c) for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of fifty cents (50c) per page.

Fees.

Part 5

Default

Section 9-501. **Default; Procedure When Security Agreement Covers Both Real and Personal Property.**

Default—rights of secured party.

(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this Part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in Section 9-207. The rights and remedies referred to in this subsection are cumulative.

Debtor's rights after default.

(2) After default, the debtor has the rights and remedies provided in this Part, those provided in the security agreement and those provided in Section 9-207.

Waiver—agreement on standards.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (1) of Section 9-505) and with respect to redemption of collateral (Section 9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and

duties is to be measured if such standards are not manifestly unreasonable:

(a) subsection (2) of Section 9-502 and subsection (2) of Section 9-504 insofar as they require accounting for surplus proceeds of collateral;

(b) subsection (3) of Section 9-504 and subsection (1) of Section 9-505 which deal with disposition of collateral;

(c) subsection (2) of Section 9-505 which deals with acceptance of collateral as discharge of obligation;

(d) Section 9-506 which deals with redemption of collateral; and

(e) subsection (1) of Section 9-507 which deals with the secured party's liability for failure to comply with this Part.

Procedure—real and personal property.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this Part do not apply.

Rights after judgment.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

Section 9-502. **Collection Rights of Secured Party.**

Notice to make payment.

(1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under Section 9-306.

Procedure—right to charge back—recourse.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

Right to possession of collateral.

Section 9-503. **Secured Party's Right to Take Possession After Default.** Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the security party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under Section 9-504.

Section 9-504. **Secured Party's Right to Dispose of Collateral After Default; Effect of Disposition.**

Right to dispose of collateral.

(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the Article on Sales (Article 2).

Disposition of proceeds.

The proceeds of disposition shall be applied in the order following to:

(a) The reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the

security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

Duty to account.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of account, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

Public or private sale of collateral.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or who is known by the secured party to have a security interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

Notice.

Rights of purchaser.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the

security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this Part or of any judicial proceedings:

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

Duties of transferee.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this Article.

Section 9-505. **Compulsory Disposition of Collateral; Acceptance of the Collateral as Discharge of Obligation.**

Duty of secured party to dispose of collateral where sixty per cent of loan paid.

(1) If the debtor has paid sixty per cent of the cash price in the case of a purchase money security interest in consumer goods or sixty per cent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this Part a secured party who has taken possession of collateral must dispose of it under Section 9-504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under Section 9-507(1) on secured party's liability.

Liability.

Retainer in satisfaction.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor and except in the case of consumer goods to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or is known by the secured party in possession to have a security interest in it. If the debtor or

Notice.

Written objection.

other person entitled to receive notification objects in writing within thirty days from the receipt of the notification or if any other secured party objects in writing within thirty days after the secured party obtains possession the secured party must dispose of the collateral under Section 9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

Section 9-506. **Debtor's Right to Redeem Collateral.** At any time before the secured party has disposed of collateral or entered into a contract for its disposition under Section 9-504 or before the obligation has been discharged under Section 9-505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses.

Debtor's right to redeem.

Section 9-507. **Secured Party's Liability for Failure to Comply With This Part.**

(1) If it is established that the secured party is not proceeding in accordance with the provisions of this Part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this Part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten per cent of the principal amount of the debt or the time price differential plus ten per cent of the cash price.

Secured party's liability for noncompliance.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured

Commercially reasonable manner defined.

party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

ARTICLE 10

EFFECTIVE DATE AND REPEALER

Effective January 1, 1965.

Section 10-101. **Effective Date.** This Act shall become effective at midnight on January 1, 1965. It applies to transactions entered into and events occurring after that date.

Section 10-102. **Specific Repealer; Provision for Transition.**

Repealing clause.

(1) The following sections of the Revised Codes of Montana, 1947, as amended, and all other acts and parts of acts inconsistent herewith are hereby repealed: sections 5-1007, 5-1008, 5-1016, 5-1017, 5-1043, 5-1047 through 5-1049, 8-501 through 8-507, 8-816 through 8-818, 14-523, 15-603, 15-605, 15-628 through 15-651, 16-2921, 17-308 through 17-314, 17-601, 17-602, 18-201 through 18-205, 30-601 through 30-609, 45-106, 45-1104, 45-1301 through 45-1305, 52-301 through 52-311, 52-315 through 52-317, 55-101 through 55-1801, 56-107, 65-104, 65-107, 65-115 through 65-126, 65-201 through 65-219, 67-1702 through 67-1704, 72-303, 72-305 through 72-307, 74-201, 74-202, 74-204 through 74-207, 74-321, 74-401 through 74-403, 74-502, 86-705, 86-706, 88-101 through 88-149, 88-156 through 88-160, and 93-4339.

Saving clause.

(2) Transactions validly entered into before the effective date specified in Section 10-101 and the rights,

duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this Act as though such repeal or amendment had not occurred.

Repealing clause.

Section 10-103. **General Repealer.** Except as provided in the following section, all acts and parts of acts inconsistent with this Act are hereby repealed.

Construction—laws not repealed.

Section 10-104. **Laws Not Repealed.** The Article on Documents of Title (Article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (Section 1-201).

References to a "branch" or "separate office" of a bank in this Act are included to preserve uniformity in a Uniform Act and are not to be construed as affecting or amending in any way the laws of this state relative to the operation of branches or separate offices of a bank.

This Act does not repeal or modify any of the following provisions of the Revised Codes of Montana, 1947: section 66-219, relating to auctioneer's memorandum of sale; section 72-411, relating to claims against carriers for damage to livestock; or sections 83-601 to 83-607, inclusive, relating to contract actions against the state.

ARTICLE 11

AMENDMENTS TO EXISTING LAWS

Amending clause.

Section 11-101. Section 3-226 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Possession by warehouseman considered bailment.

"3-226. **Possession by warehouseman considered bailment, when—prior right of warehouse receipt holder to grain.** Whenever any grain shall be delivered to any person, association, firm or corporation doing a grain, warehouse or grain elevator business in this state, and the receipt issued therefor provides for the delivery of a like

amount and kind, grade and quality to the holder thereof in return, such delivery shall be a bailment and not a sale of the grain so delivered, and in no case shall the grain so stored be liable to seizure upon process of any court in an action against such bailee, except action by owners of such warehouse receipts to enforce the terms therefor, but such grain shall at all times in the event of failure or insolvency of such bailee be first applied exclusively to the redemption of outstanding storage warehouse receipts for grain so stored with such bailee (matter deleted).''

Priority—warehouse receipts.

Amending clause.

Section 11-102. Section 5-803 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Deposits in insolvent bank.

''5-803. **Deposits in insolvent bank. Except as otherwise provided by the Uniform Commercial Code:** Whenever any bank shall be insolvent in the manner described and set forth in this act, such bank shall not accept or receive on deposit any money, bank bills, or notes, United States treasury notes or currency, or other notes, bills or drafts circulating as money or currency, or transact any other business in (matter deleted) connection with its operations, except as trustee for the depositors and parties transacting business with them, and it or they shall keep all such deposits of money, bills or notes, or United States treasury notes or currency or other notes, bills, or drafts circulating as money or currency, separate and apart from the general assets of the bank, from and after the date of the accrual of such insolvency, and when such impairment or insolvency has been made good, such deposits received in trust may be transferred to the general assets of the bank on and by written consent of the superintendent of banks; provided, that in the event such insolvency be not made good then any and all such trust deposits shall be returned to the depositors making them; provided, further, than any officer, director, cashier, manager, member, partner or managing partner thereof, who shall knowingly accept or receive, be accessory to or permit or connive at the receiving or accepting of such trust deposits, except in the manner hereinbefore set forth in this section, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by a fine not exceeding ten thousand dollars ($10,000.00), or imprisonment in the state prison not exceeding five (5) years, or by both fine and imprisonment as aforesaid.''

Duty to keep separate.

Violation—penalties.

Amending clause.

Section 11-103. Section 5-1001 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Limitation—banks' authority to accept or issue drafts.

''5-1001. **Acceptance and issuance of drafts and letters of credit.** Every bank organized and existing under the laws of Montana, shall have power and authority to accept for payment at a future date, drafts drawn upon it, by its customers, and to issue letters of credit, authorizing holders thereof to draw drafts upon it, or its correspondents at sight or on time (matter deleted), provided that the total amount of drafts so accepted or letters of credit so issued for any one person, firm or corporation, shall not at any one time exceed twenty per cent (20%) of the capital and surplus of the accepting or issuing bank.''

Amending clause.

Section 11-104. Section 5-1114 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Order of payment—debts of liquidated bank.

''5-1114. **Claims—order of payment—priorities. Except as otherwise provided by the Uniform Commercial Code,** the order of payment of the debts of a bank liquidated by the superintendent of banks shall be as follows:

Expenses.

''(1) The expense of liquidation, including compensation of agents, employees and attorneys.

Other banks' funds.

''(2) All funds of any other bank in process of liquidation by the superintendent of banks and placed on deposit by the superintendent of banks.

Trust funds.

''(3) All funds held by the bank in trust.

Debts due.

''(4) Debts due depositors, holders of cashier's checks, certified checks, drafts on correspondent banks, including protest fees, paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies, and all deposits of public funds of every kind and character (except those actually placed on special deposit under the statutes providing therefor), including those of the United States, the state of Montana, and every county, district, municipality, political subdivision or public corporation of this state, whether secured or unsecured, or whether deposited in violation of law or otherwise, are

included within the terms of this subdivision and take the same priority as debts due any other depositor. All contractual liabilities pro rata. Accrued interest on savings accounts, certificates of deposit or other interest bearing contracts, up to the time of the closing the bank to be considered as part of the debt due.

Interest.

"(5) Interest on all the foregoing classes of claims without regard to the priority computed from the date of closing of the bank at the rate of seven per centum (7%) per annum.

Unliquidaetd claims.

"(6) Unliquidated claims for damages and the like, including claims of stockholders for amounts claimed to have been voluntarily advanced to the bank or paid in by way of special or voluntary or other assessments; provided, however, that the superintendent may, in his discretion, without regard to the priorities herein fixed in subdivisions (3), (4), (5) and (6) of this section, or in preference to the payment of any claims of creditors within these subdivisions, pay off and discharge any lien, claim or charge against the assets or property of the bank in his hands and pay out and expend such sums as he deems necessary for the preservation, maintenance, conservation and protection of any such assets and property, and likewise property on which the bank has liens by mortgage or otherwise; and he may also, in his discretion create a fund or retain in his hands in preference to the claim of any creditors in the subdivisions above mentioned moneys for the aforesaid purposes.

Security collateral.

"(7) Collateral which shall have been put up or pledged as security for the payment of bills payable by any bank, or any loans or discounts which shall have been outstanding as rediscounts of any bank prior to the closing thereof, shall not be available to the other creditors of such bank in whole or in part until such bills payable or rediscounts shall have been retired, after which offsets as in this section provided shall be allowed.

Offset.

"(8) Deposits of any person, firm or corporation in a bank which is in the possession of the superintendent, may be offset against any indebtedness, (subject to the conditions of the preceding paragraph of this section), except assessments on stock, due to such bank from such person, firm or corporation. All dividends when declared

in favor of any creditor of the bank may be applied, in the discretion of the superintendent, in satisfaction of the indebtedness, if any, due the bank from such creditor."

Amending clause.

Section 11-105. Section 8-709 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Assent to written contract of carriage.

"8-709. **Effect of written contract.** A passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place, and manner of delivery therein stated. But his assent to any other modification of the carrier's rights or obligations contained in such instrument can be manifested only by his signature to the same, *except as otherwise provided in the Uniform Commercial Code.*"

Amending clause.

Section 11-106. Section 11-2404 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Authorization—municipal undertaking bonds.

"11-2404. **Authorization of undertaking — form and contents of bonds.** The acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking may be authorized under this chapter, and bonds may be authorized to be issued under this chapter by resolution or resolutions of the governing body of the municipality, when authorized by a majority of the taxpayers voting upon such question at a special election noticed and conducted as provided in sections 11-2308 to 11-2310, inclusive, and said special election shall be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking as in this chapter provided and ordered said special election; provided, that the issuance of refunding revenue bonds may be authorized by resolution or resolutions of the governing body of the municipality without an election.

Special election after resolution.

Refunding bonds without election.

Form and contents of bonds.

"Said bonds shall bear interest at such rate or rates not exceeding six per centum (6%) per annum, payable semi-annually, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty (40) years from their respective dates, may be payable in such place or places, may carry such registration privileges, may be subject to such terms of

redemption, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such resolution or subsequent resolutions may provide. Said bonds shall be sold at not less than par. Said bonds may be sold at private sale to the United States of America or any agency, instrumentality or corporation thereof. Unless sold to the United States of America or agency, instrumentality or corporation thereof, said bonds shall be sold at public sale after notice of such sale published once at least five (5) days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in the city of New York, New York, or the city of Chicago, Illinois, or the city of San Francisco, California. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. Said bonds and interim receipts or certificates shall be fully negotiable, (matter deleted) *as provided by the Uniform Commercial Code—Investment Securities.*"

Private sale.

Public sale—notice—publication.

Bonds shall be negotiable.

Amending clause.

Section 11-107. Section 11-3714 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Authority of commission to enter into indentures for security of bonds.

"11-3714. **Indenture for security of bonds.** The commission may enter into indentures providing for the aggregate principal amount, date, or dates, maturities, interest rate, denominations, form, registration, transfer and interchange of such bonds and coupons, and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. Reference on the face of the bonds to such indenture by its date of adoption, or the apparent date on the face thereof, is sufficient to incorporate all of the provisions thereof into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to *and is bound by* all of the provisions of the indenture, (matter deleted) *to the extent that such provisions do not conflict with provisions stated in the bonds.* An indenture pursuant to which bonds are issued may include such covenants and agreements on the part of the commission

Recourse and obligation of bond holder.

Terms and contents of indenture.

as the commission deems necessary or advisable for the better security of the bonds issued thereunder. An indenture may include any, or one, or all the following clauses relating to the bonds issued thereunder: Requiring the commission to pay or cause to be paid punctually the principal of all such bonds and the interest thereon on the date or dates at the place or places, and in the manner mentioned in such bonds and in the coupons appertaining thereto in accordance with such indenture; requiring the commission to make all repairs, renewals and replacements necessary to the operation of the project and to keep it at all times in good repair; requiring the commission to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights; requiring the commission to pay and discharge or cause to be paid and discharged from the funds available for that purpose all lawful claims for labor, materials and supplies or other charges which, if unpaid, might become a lien or charge upon the revenues, or any part thereof, of any project acquired, constructed or completed from the proceeds of the sale of the bonds or from other proceeds or upon any of the physical properties thereof which might impair the security of the bonds; which limits, restricts, or prohibits any right, power or privilege of the commission to mortgage or otherwise encumber, sell, lease or dispose of any project constructed from the proceeds of the bonds or from other proceeds, or to enter into any lease or agreement which impairs or impedes the operation of such project, or any part thereof, necessary to secure adequate revenues or which otherwise impairs or impedes the rights of the holders of the bonds with respect to such revenues.

Payment of principal and interest.

Repair.

Protection of security.

Payment of lawful claims.

Restriction on encumbrance.

"Requiring the commission to fix, prescribe and collect fees, tolls, rentals or other charges in connection with the services and facilities furnished from the project acquired, constructed or purchased from part or all of the proceeds of the bonds or from other proceeds, sufficient to pay the principal of and interest on the bonds as they become due and payable, together with all expenses of operation, maintenance and repair of the project, and with such additional sums as may be required for any sinking fund, reserve fund or other special fund provided for the further security of such bonds or as a

Fixing of fees.

depreciation charge or other charge in connection with such project; requiring the commission to hold in trust the revenues pledged to the payment of such bonds and the interest thereon, or to any reserve or other fund created for the further protetion of the bonds, and to apply such revenues or cause them to be applied only as provided in the indenture.

Revenues held in trust.

Limitation on application of proceeds.

Additional bonds.

Insurance.

Default.

"Limiting the power of the commission to apply the proceeds of the sale of any issue of bonds for the acquiring, constructing, or completing of any project or any part thereof, or more than one of such projects; limiting the power of the commission to issue additional revenue bonds for the purpose of acquiring, constructing or completing any improvement or any part thereof; requiring, specifying or limiting the kind, amount and character of insurance to be maintanied by the commission on any project, or any part thereof, and the use and disposition of the proceeds of any such insurance thereafter collected; providing the events of default, and the terms and conditions upon which any or all of the bonds then or thereafter issued may become or be declared due and payable prior to maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

Breach of contract.

Amendment—modification.

Meetings.

"Designating the rights, limitations, powers and duties arising upon breach by the commission of any of the covenants, conditions, or obligations contained in any indenture; prescribing a procedure by which certain specified terms and conditions of the indenture may be subsequently amended or modified with the consent of the commission and the vote or written assent of the holders of a specified principal amount of the bonds issued and outstanding. Such clause may provide for meetings of bondholders and for the manner in which the consent of the bondholders may be given. The clause shall specifically state the effect of such amendment or modification upon the rights of the holders of all of the bonds and interest coupons appertaining thereto, whether attached thereto or detached therefrom.

Outstanding bonds.

"With respect to any clause providing for the modification or amendment of an indenture, the commission may agree that bonds held by the commission, by any department, political subdivision or agency of the state

of Montana, or by any public corporation, municipality, district or political subdivision shall not be counted as outstanding bonds, or be entitled to vote or assent but shall nevertheless, be subject to any such modification or amendment."

Amending clause.

Section 11-108. Section 11-3721 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Authority to issue funding or refunding bonds.

"11-3721. **Funding or refunding bonds—negotiability.** Funding or refunding bonds may be issued in a principal amount sufficient to provide funds for the payment of all bonds to be funded or refunded thereby, and in addition for the payment of all expenses incident to the calling, retiring or paying of such outstanding bonds, and the issuance of such funding or refunding bonds. These expenses include the difference in amount between the par value of the funding or refunding bonds and any amount less than par for which the funding or refunding bonds are sold, any amount necessary to be made available for the payment of interest upon such funding or refunding bonds from the date of sale thereof to date of payment of the bonds to be funded or refunded or to the date upon which the bonds to be funded or refunded will be paid pursuant to the call thereof or agreement with the holders thereof, and the premium, if any, necessary to be paid in order to call or retire the outstanding bonds and the interest accruing thereon to the date of the call or retirement. All bonds issued under the provisions of this act (matter deleted) *shall be fully* negotiable, (matter deleted) *as provided by the Uniform Commercial Code—Investment Securities.*"

Bonds shall be negotiable.

Amending clause.

Section 11-109. Subsection (b) of section 11-3910 of the Revised Codes of Montana, 1947, as enacted by chapter 195, Laws of Montana, 1959, is hereby amended to read as follows:

Application of law—debt limitation—tax exemption.

"(b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall (matter deleted) be subject *only* to the provisions of (matter deleted) *the Uniform Commercial Code.* Bonds issued under the provisions of this act are declared to be issued for an essential public and governmental purpose, and, together with interest thereon and income therefrom, shall be exempted from all taxes."

Amending clause.

Section 11-110. Section 13-606 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Statute of frauds—contracts requiring writing.

"13-606. **What contracts must be in writing.** The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or his agent:

"1. An agreement that by its terms is not to be performed within a year from the making thereof.

"2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section 30-105 of this code.

"3. An agreement made upon consideration of marriage other than a mutual promise to marry.
(Matter deleted.)

"4. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

"(Matter deleted.) 5. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission.

Application of law.

"This section shall not apply to agreements subject to the Uniform Commercial Code."

Amending clause.

Section 11-111. Section 16-2905 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Duties of county clerk to keep indexes.

"16-2905. **Indexes to be kept.** Every county clerk, as ex-officio recorder, must keep:

"Grantors."

"1. An index of deeds, grants, and transfers, and contracts to sell or convey real estate, labeled 'Grantors,' each page divided into four columns, headed respectively: 'Names of grantors,' 'Names of grantees,' 'Date of deeds, grants, transfer, or contracts,' and 'Where recorded';

"Grantees."

"2. An index of deeds, labeled 'Grantees,' each page divided into four columns, headed respectively: 'Names of grantees,' 'Names of grantors,' 'Date of deeds, grants, transfers, or contracts,' and 'Where recorded';

"Mortgages of real property."

"3. *An index* (matter deleted) of mortgages, labeled (matter deleted) 'Mortgages of real property,' (matter deleted) with the pages thereof divided into (matter deleted) *six* columns, headed respectively: 'Names of Mortgagor,' 'Names of mortgagees,' 'Dates of Mortgages,' 'Where recorded,' 'When filed,' 'When canceled';

"Mortgages of real property."

"4. *An index* (matter deleted) of mortgages, labeled (matter deleted) 'Mortgages of real property,' (matter deleted) with the pages thereof divided into (matter deleted) *six* columns, headed respectively: 'Names of Mortgagees,' 'Names of mortgagors,' 'Date of mortgage,' 'Where recorded,' 'When filed,' 'When canceled';

"Releases of mortgages of real property—mortgagees."

"5. *An index* (matter deleted) of mortgages, labeled (matter deleted) 'Releases of mortgages of real property—Mortgagees,' (matter deleted) with the pages thereof divided into six columns, headed respectively: 'Parties whose mortgages are released,' 'Parties releasing,' 'Date of release,' 'Where recorded,' (matter deleted) 'Date of mortgages released,' 'Where mortgages released are recorded.' (Matter deleted.)

"Powers of attorney."

"6. An index of powers of attorney, labeled 'Powers of attorney,' each page divided into five columns, headed respectively: 'Names of parties executing powers,' 'To whom powers are executed,' 'Date of powers,' 'Date of recording,' 'To whom powers are executed';

"Leases."

"7. An index of leases, labeled 'Leases,' each page divided into four columns, headed respectively: 'Names of lessors,' 'Names of lessees,' 'Date of leases,' 'When and where recorded';

"Lessees."

"8. An index of leases, labeled 'Lessees,' each page divided into four columns respectively: 'Names of lessees,' 'Names of lessors,' 'Date of leases,' 'When and where recorded';

"Marriage certificate—men."

"9. An index of marriage certificates, labeled 'Marriage certificate—Men,' each page divided into six columns, headed respectively: 'Men married,' 'To whom married,' 'When married,' 'By whom married,' 'Where married,' 'Where certificates are recorded';

"Marriage certificate—women."

"10. An index of marriage certificates, labeled 'Marriage certificates—Women,' each page divided into six columns, headed respectively: 'Women married,' (and

under this head placing the family names of the women), 'To whom married,' 'When married,' 'By whom married,' 'Where married,' 'Where certificates are recorded';

"Assignment of mortgages and leases—assignors."

"11. An index of assignments of mortgages and leases, labeled 'Assignments of mortgages and leases—Assignors,' each page divided into five columns, headed respectively: 'Assignors,' 'Assignees,' 'Instruments assigned,' 'Date of assignment,' 'When and where recorded';

"Assignment of mortgages and leases—assignees."

"12. An index of assignments of mortgages and leases, labeled 'Assignments of mortgages and leases—Assignees,' each page divided into five columns, headed respectively: 'Assignees,' 'Assignors,' 'Instruments,' 'Date of assignments,' 'When and where recorded';

"Wills."

"13. An index of wills, labeled 'Wills,' each page divided into four columns, headed respectively: 'Names of testators,' 'Date of wills,' 'Date of probate,' 'When and where recorded';

"Official bonds."

"14. An index of official bonds, labeled 'Official bonds,' each page divided into five columns, headed respectively: 'Names of officers,' 'Names of offices,' 'Date of bonds,' 'Amount of bonds,' 'When and where recorded';

"15. An index of notices of mechanics' liens, labeled 'Mechanics' liens,' each page divided into three columns, headed respectively: 'Parties claiming liens,' 'Against whom claimed,' 'Notices, when filed';

"Transcript of judgments."

"16. An index to transcripts of judgments, labeled 'Transcripts of judgments,' each page divided into seven columns, headed respectively: 'Judgment debtors,' 'Judgment creditors,' 'Amount of judgments,' 'Where recovered,' 'When recovered,' 'When transcript filed,' 'When judgment satisfied';

"Attachments."

"17. An index of attachments, labeled 'Attachments,' each page divided into six columns, headed respectively: 'Parties against whom attachments are issued,' 'Parties issuing attachments,' 'Notice of attachments,' 'When filed,' 'When attachments discharged';

"Notices of actions."

"18. An index of notices of the pendency of actions, labeled 'Notices of action,' each page divided into three

columns, headed respectively: 'Parties to action,' 'Notices, when recorded,' 'When filed';

"Certificates of sale."

"19. An index of certificates of sale of real estate sold under execution or under orders made in any judicial proceedings, labeled 'Certificates of sale,' each page divided into four columns, headed respectively: 'Plaintiff,' 'Defendant,' 'Purchaser at sale,' 'Date of sale';

"Separate property of married women and sole traders."

"20. An index of the separate property of married women and sole trader judgments labeled 'separate property of married women and sole traders,' each page divided into five columns, headed respectively: 'Names of married women,' 'Names of their husbands,' 'Nature of instruments recorded,' 'When recorded,' 'Where recorded';

"Annual work on mining claims."

"21. An index to affidavits for annual work done on mining claims, showing the name of the affiant, the name of the claim, where situated and the year when the work was done, labeled 'Annual work on mining claims';

"Notices of location of mining claims and declaratory statements."

"22. An index of mining claims and declaratory statements, labeled 'Notices of location of mining claims and declaratory statements,' each page divided into four columns, headed respectively: 'Locators,' 'Name of claim,' 'Notice, when filed,' 'Where recorded';

Births and deaths.

"23. An index to the register of births and deaths;

Water rights.

"24. An index to notices and declarations of water rights;

Estray and lost property.

"25. An index to the 'Estray and lost property book';

Assignments for creditors.

"26. An index to the record of assignments for the benefit of creditors, containing names of assignor and assignee, date and where recorded, and inventory when filed.

Financing statements.

"27. *An index to financing statements as provided in Part 4 of the Uniform Commercial Code—Secured Transactions.*

Miscellaneous.

"28. A miscellaneous index, in which must be indexed papers not hereinbefore stated."

Amending clause.

Section 11-112. Section 16-2922 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Seed and thresher's liens retained for eight years.

"16-2922. **Seed and threshers' liens to be retained eight years from and after extinction of lien.** All (matter deleted) seed liens and threshers' liens, which have heretofore or shall hereafter be filed for record in the office of any county clerk and recorded of the several counties in the state (matter deleted) shall be retained by such county clerk (matter deleted) in a file kept by him for such purposes, for a period of eight years from and after the time when said (matter deleted) seed lien, or threshers' lien has ceased to be a lien on the property described therein (matter deleted)."

Amending clause.

Section 11-113. Section 16-2923 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Authority to destroy records.

"16-2923. **Destruction of records, when allowed.** Upon the expiration of the period of time specified in section 16-2922, the county clerk and recorder (matter deleted) may destroy all (matter deleted) seed liens and threshers' lien which have been preserved for th period of time specified in this act."

Amending clause.

Section 11-114. Section 19-103 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Definitions.

"19-103. **Certain words defined.** The following words when used in the Revised Codes of Montana of 1947, or in any act amendatory of or supplemental to said codes, shall have the following meanings and interpretations unless otherwise apparent from the context. The present tense includes the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular; the word person includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration, and every mode of oral statement under oath or affirmation is embraced in the term 'testify,' and every written one in the term 'deposit'; signature or subscription includes mark when the person cannot write, his name being written near it, and written by a person who writes his own name as a witness. The following words also have the signification attached to them in this section, unless otherwise apparent from the context.

"Property."

"1. The word 'property' includes property real and personal.

"Real property."

"2. The words 'real property' are co-extensive with lands, tenements, hereditaments and possessory title to public lands.

"Personal property."

"3. The words 'personal property' include money, goods, chattels, things in action and evidence of debt.

"Year." "Month."

"4. The word 'year,' means a calendar year, and a 'month,' a calendar month, unless otherwise expressed. Fractions of a year are to be computed by the number of months, thus, half a year is six (6) months. Fractions of a day are to be disregarded in computations which include more than one (1) day and involve no questions of priority.

"State."

"5. The word 'State,' when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words 'United States' may include the district and territories.

"United States."

"Will."

"6. The word 'will' includes codicils.

"Writ."

"7. The word 'writ' signifies an order or precept in writing, issued in the name of the state, or of a court or judicial officer; and the word 'process,' a writ or summons issued in the course of judicial proceedings.

"Process."

"Vessel."

"8. The word 'vessel' when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats and every structure adapted to be navigated from place to place.

"Peace officer."

"9. The term 'peace officer' signifies any of the officers mentioned in section 94-4906.

"Magistrate."

"10. The term 'magistrate' signifies any one of the officers mentioned in section 94-4905.

"Several."

"11. The word 'several' means two (2) or more.

"Third persons."

"12. The words 'third persons' include all who are not parties to the obligation or transaction concerning which the phrase is used.

Usage.

"13. Usage, is a reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties or so well established, general and uniform,

that they must be presumed to have acted with reference thereto.

"Usual." "Customary."

"14. The words 'usual' and 'customary' mean 'according to usage.'

"Wilfully."

"15. The word 'wilfully' when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

"Neglect," etc.

"16. The words 'neglect,' 'negligence,' 'negligent,' and 'negligently' import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

"Corruptly."

"17. The word 'corruptly' imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

"Malice." "Maliciously."

"18. The words 'malice' and 'maliciously' import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

"Knowingly."

"19. The word 'knowingly' imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowl edge of the unlawfulness of such act or omission.

"Bribe."

"20. The word 'bribe' signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote, or opinion, in any public or official capacity.

"Seal."

"21. When the seal of a court or public officer is required by law to be affixed to any paper the word 'seal' includes an impression of such seal upon the paper alone, or upon any substance attached to the paper capable of receiving a visible impression. The seal of a private person may be made in like manner, or by the scroll of a pen, or by writing the word 'seal' against his name.

Terms referring to security interest.

"22. *'Pledge,' 'mortgage,' 'conditional sale,' 'lien,' 'assignment,' and like terms, when used in referring to a security interest in personal property, shall include a corresponding type of security interest under the Uniform Commercial Code—Secured Transactions.*"

Amending clause.

Section 11-115. Section 25-231 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Schedule of fees of county clerks.

"25-231. **Fees of county clerks.** The fees of county clerks, which must be charged and collected for the use of their respective counties, are as follows:

"For recording and indexing each instrument of writing allowed by law to be recorded; except as hereinafter provided;

"For first folio, sixty cents (60¢) and for each subsequent folio or fraction thereof, thirty cents (30¢);

"For each entry in index, twenty cents (20¢);

"For certificate that such instrument has been recorded with seal affixed, one dollar ($1.00);

"For recording and indexing each real estate mortgage, assignment, renewal, or release of real estate mortgage;

"For each folio, forty cents (40¢);

"For each entry in index, twenty cents (20¢);

"For certificate that such mortgage, assignment or release has been recorded with seal affixed, one dollar ($1.00);

"For recording and indexing each certificate of location of quartz or placer mining claim, millsite claim, or notice of appropriation of water, including certificate that such instrument has been recorded with seal affixed, four dollars ($4.00);

"For recording and indexing each affidavit of annual labor on mining claim, including certificate that such instrument has been recorded with seal affixed, two dollars ($2.00) for the first mining claim in said affidavit, and fifty cents (50¢) for each additional mining claim described and included therein;

"For filing and indexing each (matter deleted) writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, one dollar ($1.00);

"For filing and indexing each certificate of incorporation or annual statement of any corporation, two dollars ($2.00);

"For recording and platting each town site or map;

"For each lot up to and including one hundred, fifty cents (50¢);

"For each additional lot in excess of one hundred, ten cents (10¢);

"For recording the field notes of survey of any town site, per folio, fifty cents (50¢).

"Provided that in all cases where recording is done by photographic or similar process the fee to be charged by the county clerk and recorder for filing and indexing the same shall be two dollars ($2.00) for each page or fraction thereof of said instrument.

"For a copy of any record or paper, for each folio, thirty cents (30¢) and for each certification with seal affixed, one dollar ($1.00); provided, that in all cases where copies of any record or paper are to be certified by the county clerk and such copy is furnished to said clerk for certification, said clerk shall not make a charge nor receive a fee for the comparison of such copy, other than the fee of one dollar ($1.00) for his certificate and seal.

"For searching any index record of files of the office, for each year when required, in abstracting or otherwise, thirty cents (30¢);

"For each entry of discharge or satisfaction of mortgage, lien or other instrument on the margin of record thereof, or upon the original instrument, and noting same in the indexes concerned, fifty cents (50¢);

"For administering an oath with certificate and seal he shall make no charge;

"For taking and certifying an acknowledgment, with

seal affixed, for signature thereto he shall make no charge;

"For recording and indexing any instrument which may be recorded pursuant to the provisions of section 73-104, Revised Codes of Montana, 1947, and which pertains to land allotted to an Indian or land within an Indian Reservation, except fee patents, he shall make no charge;

"For filing, indexing, or other services provided for by Part 4 of the Uniform Commercial Code—Secured Transactions, such fees as are prescribed therein.

"For filing or recording or indexing any other instrument not herein expressly provided for, the same fee as hereinbefore provided for a similar service.

Duty of county clerk to endorse charges.

"On each instrument delivered to him for recording, it shall be the duty of the county clerk to endorse thereon all charges made by him for such service and such endorsement shall be recorded as a part of the instrument in his office in order that the state examiner may verify such charges from time to time and may see that they have been properly entered on the fee book or reception record in the county clerk's office."

Amending clause.

Section 11-116. Title 20, chapter 3, of the Revised Codes of Montana, 1947, "Deposit for Keeping—Storage —Unclaimed Property," is hereby amended by incorporating therein a new section 20-314, as follows:

Application of law.

"20-314. **Uniform Commercial Code — applicability.** The provisions of this chapter apply only to the extent not otherwise provided for in the Uniform Commercial Code."

Amending clause.

Section 11-117. Subsection (2) of section 32-1905 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Required statement on bonds.

"(2) All bonds issued under this act shall contain a statement on the face thereof that the state shall not be obligated to pay the same or the interest thereon except from the special fund hereinafter provided for. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes with the same

Validity of signatures.

effect as though they had remained in office until such delivery. All such bonds shall be *fully* negotiable (matter deleted), *as provided by the Uniform Commercial Code—Investment Securities.*"

Bonds shall be negotiable.

Amending clause.

Section 11-118. Section 45-109 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Lien on future interest.

"45-109. **Lien on future interest.** An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. *Except as otherwise provided by the Uniform Commercial Code,* in such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest."

Amending clause.

Section 11-119. Section 45-112 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Contracts for forfeiture void.

"45-112. **Certain contracts void.** *Except as otherwise provided by the Uniform Commercial Code:* all contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void."

Amending clause.

Section 11-120. Section 45-116 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Lienholder's right to compensation.

"45-116. **Holder of lien not entitled to compensation.** *Except as otherwise provided by the Uniform Commercial Code:* One who holds property by virtue of a lien thereon is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under section 47-109 and 47-110."

Amending clause.

Section 11-121. Section 45-301 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Right of redemption.

"45-301. **Right to redeem.** *Except as otherwise provided by the Uniform Commercial Code,* every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed."

Amending clause.

Section 11-122. Section 45-308 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Extinguishment of lien—restoration.

"45-308. **When restoration extinguishes lien.** *Except as otherwise provided by the Uniform Commercial Code:* the voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration."

Amending clause.

Section 11-123. Section 45-704 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Duty of lienor to acknowledge satisfaction of seed lien.

"45-704. **Acknowledgment of satisfaction of lien.** Whenever the indebtedness which is a lien upon such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof (matter deleted), and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid, *within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops,* he is liable to any person injured thereby in the amount of such injury and the costs of the action."

Liability.

Amending clause.

Section 11-124. Section 45-707 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Duty of lienor to acknowledge satisfaction of hail lien.

"45-707. **Satisfaction of lien.** Whenever the indebtedness, which is a lien upon such grain or other crops, is paid or satisfied on or before November 1 of the then current year, it is the duty of the lienor to acknowledge satisfaction thereof (matter deleted) within twenty days after receiving payment, and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid he is liable to any person injured thereby in the amount of such injury and the costs of action. If any hail lien is not satisfied on or before the first day of March of the next succeeding year after the insurance was carried on the crop, the same shall be deemed satisfied and released of record."

Liability.

Amending clause.

Section 11-125. Section 45-809 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Duty of lienor to acknowledge satisfaction of thresherman's lien.

"45-809. **Acknowledgment of satisfaction of lien—penalty.** Whenever the indebtedness which is a lien upon any such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof (matter deleted), and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, *within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops,* he is liable to any person injured thereby in the amount of such injury and the costs of action."

Liability.

Amending clause.

Section 11-126. Section 45-911 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Duty of lienor to acknowledge satisfaction of farm laborer's lien.

"45-911. **Acknowledgment of satisfaction of lien—penalty.** Whenever the indebtedness which is a lien upon any of such crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof (matter deleted), and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, *within thirty (30) days after being requested to do so by a person having a property interest in such crops,* he is liable to any person injured thereby in the amount of such injury and costs of action."

Liability.

Amending clause.

Section 11-127. Section 45-1106 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Special possessory liens—agister or service.

"45-1106. **Agisters' liens and liens for service—priority.** Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant thereof by labor or skill employed for the making, repairing, protection, improvement, safe keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner or lawful claimant for such service and for material, if any, furnished in connection therewith. A ranchman, farmer, agister, herder, hotel-keeper, livery, boarding, or feed stable-keeper, to whom any horses, mules, cattle, sheep, hogs, or other stock are intrusted, and there is a contract, express or implied, for their keeping, feeding, herding, pasturing, or ranching, has a lien upon such stock for

the amount due for keeping, feeding, herding, pasturing, or ranching the same, and is authorized to retain possession thereof until the sum due is paid. The lien hereby created shall not take precedence over (matter deleted) *perfected security interests under the Uniform Commercial—Secured Transactions,* or other recorded liens on the property involved, unless within ten days from the time of receiving the property, the person desiring to assert a lien thereon shall give notice in writing to said (matter deleted) *secured party* or other lien-holder, stating his intention to assert a lien on said property, under the terms of this act, and stating the nature and approximate amount of the work, or feed, performed or furnished or intended to be performed or furnished therefor.

Priority.

Notice.

"Such service may be made either by personal service or by mailing by registered mail a copy of said notice to the (matter deleted) *secured party* or other lien-holder at his last known postoffice address. Said service shall be deemed complete upon the deposit of the notice in the postoffice."

Service.

Amending clause.

Section 11-128. Section 45-1107 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Secured party may take possession—payment of lien.

"45-1107. **Secured party may take possession of property.** Within ten days after the date of such mailing, or five days after such personal service, the (matter deleted) *secured party* or other lien-holder, or his representative, shall have the right to take possession of said property upon payment of the amount of the lien then accrued. A failure on the part of such (matter deleted) *secured party* or other lien-holder so to do shall constitute a waiver of the priority of such (matter deleted) *security interest* or other lien *over the lien created by this act.*"

Waiver.

Amending clause.

Section 11-129. Section 45-1410 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Duty of lienor to acknowledge satisfaction of crop spraying lien.

"45-1410. **Acknowledgment of satisfaction and discharge of lien—penalty for failure.** Whenever the indebtedness which is a lien upon any such grain or crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof (matter deleted), and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, *within thirty (30) days after being requested*

Liability.

to do so by a person having a property interest in such grain or crops, he is liable to any person injured thereby in the amount of such injury and the costs of action."

Amending clause.

Section 11-130. Section 47-124. of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Legal interest—six per cent.

"47-124. **Legal interest.** *Except as otherwise provided by the Uniform Commercial Code* Unless there is an express contract in writing, fixing a different rate, interest is payable on all moneys at the rate of six per cent (6%) per annum after they become due on any instrument of writing, except a judgment, on an account stated, and on moneys lent or due on any settlement of accounts from the date on which the balance is ascertained, and on moneys received to the use of another and detained from him. In the computation of interest for a period of less than one (1) year, three hundred and sixty-five (365) days are deemed to constitute a year."

Amending clause.

Section 11-131. Section 52-114 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Recording—assignment of mortgage—effect.

"52-114. **Assignment of mortgage—recording—notice—address of assignee prerequisite to recording.** An assignment of a real estate mortgage may be recorded in like manner as a real estate mortgage (matter deleted) and the record thereof shall operate as due and legal notice to the mortgagor and all persons subsequently deriving title to the mortgage from the assignor as well as to all other persons including subsequent purchasers, encumbrancers, mortgagees or other lien holders.

Assignee's address required.

"Any such assignment shall contain the assignee's post office address at his place of residence, and shall not be entitled to be recorded or filed unless it contains such post office address."

Amending clause.

Section 11-132. Section 52-116 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Recording subordination or waiver agreements—effect.

"52-116. **Recording of subordination or waiver agreements—real estate.** That a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any read estate mortgage of record (matter deleted) *or* the property therein included may be recorded in like manner as a real estate mortgage (matter deleted), and such record (matter deleted) shall operate as due and legal notice to the mortgagor and the mortgagee and to all other interested persons. Any such subordination agreement or waiver shall be valid and binding so far as the mortgage therein referred to or the property covered by such mortgage is concerned, when executed by the record holder of the mortgage involved."

Amending clause.

Section 11-133. Title 52, chapter 1, of the Revised Codes of Montana, 1947, "Mortgages in General," is hereby amended by incorporating therein a new section 52-117, as follows:

Application of law.

"52-117. **Uniform Commercial Code — applicability.** In the event of conflict between any provision of this chapter and the Uniform Commercial Code, the latter shall govern."

Amending clause.

Section 11-134. Section 52-212 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Law governing mortgages and deeds of trust.

"52-212. **Mortgages and deeds of trust covering real and personal property.** All mortgages *and* deeds of trust (matter deleted) *covering* both real and personal property, executed by a corporation, association or partnership, or by an individual or individuals, are governed by the law relating to mortgages or deeds of trust of real property (matter deleted) *so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned.*"

Amending clause.

Section 11-135. Section 52-312 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Action—foreclosure of security interest in personal property.

"52-312. **Foreclosure of security interests in personal property—by action—by sheriff's sale.** An action for the foreclosure of a (matter deleted) *security interest in* personal property (matter deleted) may be commenced and conducted in the same manner as provided by law for the foreclosure of morgtages upon real property, and the same may be joined in an action for the recovery of the possession of the property (matter deleted) *subject to the security interest; but the remedial scope of proceedings for the foreclosure of interests subject to the Uniform Commercial Code—Secured Transactions is governed by Part 5 thereof.*

Sheriff's sale.

"A security agreement covering personal property may contain a clause authorizing the sheriff of the county in which said property, or any part thereof, may be, (matter deleted) *on request of the secured party and the delivery to the sheriff of a copy of such security agreement, to take possession of such property in case of default and to sell the same. If a security agreement contains such clause and if the secured party complies with the terms thereof, it is hereby made the duty of such sheriff, upon the request of the secured party or his legal representative or assigns, to take possession of such property and* to advertise and sell the whole or any part of the (matter deleted) *same*; and at such sale (matter deleted) *the secured party,* or his representatives or assigns, may, in good faith, purchase the property so sold, or any part thereof. The sheriff (matter deleted) *shall* require a *reasonable* indemnity bond from the (matter deleted) *secured party* or his assigns before taking possession of or selling the (matter deleted) *said* property. Notice of sale, (matter deleted) *application of the proceeds, liability for deficiency, and effect of disposition shall be as provided in section 9-504 of the Uniform Commercial Code."*

Duty of sheriff.

Indemnity.

Application of law.

Amending clause.

Section 11-136. Section 52-313 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Time for sheriff's sale.

"52-313. **Sales — commencement and postponement.** All sales made under the provisions of this act shall be commenced between the hours of nine o'clock in the morning and five o'clock of the afternoon of the day specified in the notice, and within thirty days after the seizure of the property, unless the sale shall be postponed. Any sale may be postponed at the discretion of the sheriff one week, by public announcement at the time designated for the sale to take place when there are no bidders, or when the amount offered is grossly inadequate, or upon the request of the (matter deleted) *debtor.*"

Postponement.

Amending clause.

Section 11-137. Section 52-314 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Report of sale.

"52-314. **Report of sales, and filing thereof.** Within ten days after the sale of any (matter deleted) property *subject to a security interest,* as herein provided, the person making the sale shall make out in writing a full report, under oath, of all the proceedings in such foreclosure, specifying particularly the property sold, the amount received

therefor, the name of the person to whom sold, the amount of the costs and expenses itemized, a copy of the notice of sale, (matter deleted), a statement (matter deleted) *of the manner in which notice of the sale was given,* and the disposition made by him of the proceeds of the sale, and shall file the same in the office of the county clerk and recorder, *or other filing officer,* where the (matter deleted) *financing statement respecting the security agreement* is filed; which report shall be received in all courts as prima facie evidence of the fact therein stated. The county clerk and recorder *or other filing officer* shall properly index said report and attach the report of sale to the (matter deleted) *financing statement* on file."

Filing.

Evidence.

Duty of filing officer.

Amending clause.

Section 11-138. Section 52-319 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Duties of general recorder of marks and brands—filing—notice of livestock agreements.

"52-319. **Notices of security agreements covering livestock, renewals, assignments and satisfactions to be filed by recorder of marks and brands—list to be furnished stock inspectors—livestock markets not liable when notice not filed.** The general recorder of marks and brands of the state of Montana shall accept and file in the office of the general recorder of marks and brands, notices of (matter deleted) *security agreements,* renewals, assignments and satisfactions thereof (matter deleted) *covering* livestock owned by any person, firm, corporation, or association, and bearing his, their, or its recorded brand, and shall list such notices on the official records of marks and brands kept by him, and also shall cause to be listed said notices in the offices of the stock inspectors, employed by the livestock commission and stationed at the several central livestock markets where records are kept of marks and brands. All forms on which such notices shall be given shall be prescribed by the livestock commission and shall be furnished by the (matter deleted) *secured party,* who shall give such notice. No livestock market to which livestock is shipped shall be held liable to any (matter deleted) *secured party* for the proceeds of livestock sold through such livsetock market by the (matter deleted) *debtor* unless notice of such (matter deleted) *security agreement* is filed as hereinbefore provided."

Forms.

Liability of livestock market.

Amending clause.

Section 11-139. Section 52-320 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Contents of notice.

"52-320. **Contents of notices.** Such notices shall con-

sist of a statement showing the date of (matter deleted) *security agreement,* the (matter deleted) *names and addresses* of the (matter deleted) *debtors and secured parties,* and/or holders and owners thereof, a description of the livestock covered by said (matter deleted) *security agreement,* (matter deleted) and in case of notice of renewal, the notice shall state the date of renewal thereof (matter deleted) and in the case of a notice of assignment of a (matter deleted) *security interest,* such notice shall state the date of such assignment, (matter deleted) and a description of the (matter deleted) *security agreement as to which such assignment is made* and the parties to the assignment, and such other or additional information as may be required from time to time by the livestock commission of the state of Montana."

Amending clause.

Section 11-140. Section 52-321 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Duty of secured party to file satisfaction.

"52-321. **Duty of secured parties to file satisfactions of security agreements.** It shall be the duty of the (matter deleted) *secured parties,* who filed notices of (matter deleted) *security agreements,* renewals and assignments thereof, with the general recorder of marks and brands, as provided for in this act, to file notices of satisfaction of such (matter deleted) *security agreements* with the general recorder of marks and brands immediately upon the satisfaction of said (matter deleted) *security agreement.*"

Amending clause.

Section 11-141. Section 52-322 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Fees—deposit in livestock commission fund.

"52-322. **Fees—disposal of.** The general recorder of marks and brands shall charge for filing and listing such notices of (matter deleted) *security agreements* the sum of one dollars ($1.00) for each recorded brand listed in each (matter deleted) *security agreement,* and for filing and listing each notice of satisfaction or renewal or assignment of such (matter deleted) *security agreement,* the sum of one dollar ($1.00) for each recorded brand listed therein. All fees so charged shall be paid into the livestock commission fund."

Amending clause.

Section 11-142. Section 52-323 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

"52-323. **Brand recorder or livestock commission not responsible for collection or payment of money under security agreements.** Neither the general recorder of marks and brands nor the livestock commission, nor any of its agents or employees shall be held responsible or liable to either (matter deleted) *debtor or secured party* for the collection or payment of any money due the holder of any *security agreement covering* livestock (matter deleted), or renewals, satisfactions, or assignments thereof as provided in this act; providing the provisions of this act are carried out in good faith."

Liability of recorder and livestock commission.

Amending clause.

Section 11-143. Section 53-110 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

"53-110. **Filing of liens, rights, procedure, fees.**

Filing of liens on motor vehicles with registrar.

"(a) No chattel mortgage, conditional sales contract, lease or other lien on a motor vehicle shall be valid as against creditors, subsequent purchasers or encumbrancers unless and until such mortgage, conditional sales contract, lease or other lien, or a true copy thereof certified by a notary public has been filed with the registrar of motor vehicles as hereinafter provided; the registrar shall not file any mortgage, conditional sales contract, lease or other lien unless such mortgage, conditional sales contract, lease or other lien is accompanied by the certificate of ownership of such vehicle, except in the sale of a new motor vehicle by a duly licensed dealer, and when such mortgage, conditional sales contract, lease or other lien or certified copy thereof is so presented for filing the registrar shall file the same entering upon his records the name and address of the mortgagee, conditional sales vendor, lessor, or other lienor together with the amount of the lien and he shall at the same time endorse the same information upon the face of the certificate of ownership, mailing a statement certifying to the filing of such mortgage, conditional sales contract, lease or other lien, to the mortgagee, vendor, or other lienor and mail the certificate of ownership to the owner at the address given on said certificate. The owner being the person entilted to operate and possess such motor vehicle. (Matter deleted.)

Duty of registrar.

Duty of registrar to retain satisfactions for eight years.

Duty to retain liens for eight years.

"(b) *Satisfactions or statements of release filed with the registrar of motor vehicles under this act shall be retained by him for a period of eight (8) years after receipt, after which they may be destroyed. Chattel mortgages, conditional sales contracts, leases, or other liens filed with the registrar, and all renewals and assignments thereof,*

shall be retained by him for a period of eight (8) years after the maturity date stated in such mortgage, conditional sales contract, lease, or other lien, or renewal, or if no maturity date is therein stated, for a period of thirteen (13) years after receipt, after which they may be destroyed.

Effect of filing.

"(c) From and after the filing of any mortgage, conditional sales contract, lease, or other lien, or copy thereof on any motor vehicle, as herein provided, then and in that event such mortgage, conditional sales contract, lease or other lien shall be constructive notice of the said mortgage, conditional sales contract, lease or other lien and its contents to subsequent purchasers and encumbrancers.

Remedies of mortgagee or vendor after default.

"(d) Upon default under a chattel mortgage *or conditional soles contract* covering a motor vehicle the mortgagee (matter deleted) *or vendor has the same remedies* as in the case of other personal property, (matter deleted) *except that the remedy of seizure* prescribed by section (matter deleted) *52-312 shall be available* upon delivery to the sheriff of the original instrument or a copy certified by the registrar of motor vehicles *and such undertaking as may be required by the sheriff* (matter deleted). In case of attachment of motor vehicles all the provisions of section (matter deleted) *93-4338* shall be applicable except *that* deposits must be made with the registrar of motor vehicles (matter deleted).

Liability for failure to file satisfaction.

"(e) In the event any conditional sales vendor or assignee or chattel mortgagee or assignee fails to file a satisfaction of a chattel mortgage, assignment or conditional sales contract within fifteen days after receiving final payment on such mortgage, assignment, or conditional sales contract he shall be required to pay the registrar of motor vehicles the sum of one dollar ($1.00) for each and every day thereafter that he fails to file such satisfaction. All moneys paid to the registrar of motor vehicles under this section shall revert to the automobile theft fund.

Penalty—deposit in automobile theft fund.

"(f) Upon receipt of any liens, or notice of liens dependent on possession, or attachments, etc., against the record of any motor vehicle registered in this state, the registrar shall within 24 hours, mail to the owner, conditional sale vendor, mortgagees, or assignee of any thereof a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in

the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and/or attaching creditor.

Refiling unnecessary.

"(g) It shall not be necessary to refile with the registrar of motor vehicles any instruments on file in the offices of the county clerks and recorders at the time this law takes effect.

Registrar's fees.

"(h) A fee of one dollar ($1.00) shall be paid to the registrar of motor vehicles upon and for filing any lien or lien instrument against any motor vehicle, and said fee of one dollar ($1.00) shall further include and cover the cost of filing a satisfaction or release of the lien or lien instrument, and, also, the cost of endorsing such satisfaction or release on the face of the certificate of ownership or on the records of the registrar, or both. A fee of fifty cents ($.50) shall be paid the registrar of motor vehicles for issuing a certified copy of a chattel mortgage, conditional sales contract or other lien, or instrument of encumbrance on file in the office of the registrar, or for filing any assignment of any instrument on file with the registrar."

Amending clause.

Section 11-144. Title 59, chapter 5, of the Revised Codes of Montana, -1947, as amended, "Prohibitions and General Provisions Applicable to Public Officers," is hereby amended by incorporating therein a new section 59-516.1, as follows:

Duty of filing officer to retain for eight years.

"59-516.1. **Security agreements.** Termination statements filed under the Uniform Commercial Code—Secured Transactions shall be retained by the filing officer for a period of eight (8) years after receipt, after which they may be destroyed. Financing statements, continuation statements, statements of assignment, and statements of release, the filing of which is authorized by the Uniform Commercial Code—Secured Transactions and as to which no termination statement has been filed, shall be retained by the filing officer for a period of eight (8) years after lapse of the original financing statement or of the latest continuation statement, whichever is later. At the expiration of such period all such statements may be destroyed."

Amending clause.

Section 11-145. Section 66-202 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Auctioneer's authority to bind.

"66-202. **Auctioneer's authority from the bidder.** An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract, as prescribed in (matter deleted) *section 66-219.*"

Amending clause.

Section 11-146. Section 67-1301 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Property affixed to land.

"67-1301. **Fixtures.** When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as provided in section 67-1307 *and in the Uniform Commercial Code,* belongs to the owner of the land, unless he chooses to require the former to remove it."

Amending clause.

Section 11-147. Title 67, chapter 14, of the Revised Codes of Montana, 1947, "Acquisition of Personal Property by Accession," is hereby amended by incorporating therein a new section 67-1410, as follows:

Application of law.

"67-1410. **Uniform Commercial Code—applicability.** The provisions of this chapter apply only to the extent not otherwise provided for in the Uniform Commercial Code."

Amending clause.

Section 11-148. Section 72-211 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Corporate authority to borrow money—issue bonds.

"72-211. **May borrow money and secure payment.** Any corporation organized under this chapter shall have power to borrow money on the credit of the corporation to an amount not exceeding its authorized capital stock, at a rate of interest to be agreed upon by the respective parties, and may execute bonds therefor in sum of not less than one hundred dollars, and secure the payment thereof by mortgage or pledge of the property and income of such corporation. (Matter deleted.)"

Amending clause.

Section 11-149. Section 72-224 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Authority of railroad corporation to issue and negotiate bonds.

"72-224. **May issue and secure bonds.** Any railroad corporation whose line is wholly or partly within this state, whether chartered by or organized under the law of the state or territory of Montana, or of the United States, or of any other state or territory, shall have authority and power to make, issue, negotiate, and deliver its bonds, securities, or obligations to such amount, not exceeding its

authorized capital stock, bearing such rate of interest and payable at such time or times as its board of directors shall determine, and may negotiate, sell, pledge, or otherwise dispose of the same at such price, and on such terms, and in such manner as its board of directors may authorize or determine; and to secure the payment of all or any of such bonds, securities, or obligations, and the interest thereon, may make, execute, and deliver such mortgages or deeds of trust upon all or any part of its property, income, and franchises, as the board of directors may determine or direct (matter deleted)."

Amending clause.

Section 11-150. Title 74, chapter 3 , of the Revised Codes of Montana, 1947, "Rights and Obligations of Seller —Delivery and Warranty," is hereby amended by incorporating therein a new section 74-325, as follows:

Application of law.

"74-325. **Uniform Commercial Code—applicability.** This chapter shall not apply to sales subject to the Uniform Commercial Code."

Amending clause.

Section 11-151. Title 74, chapter 5, of the Revised Codes of Montana, 1947, "Exchange," is hereby amended by incorporating therein a new section 74-505, as follows:

Application of law.

"74-505. Uniform Commercial Code — applicability. The provisions of this chapter shall not apply to exchanges subject to the Uniform Commercial Code."

Amending clause.

Section 11-152. Section 74-608 of the Revised Codes of Montana, as enacted by Laws of Montana 1959, ch. 282, is hereby amended to read as follows:

Limitations on finance charges—retail installment transactions.

"74-608. **Finance charge limitation.** (a) Notwithstanding the provisions of any other law, the finance charge included in a retail installment transaction shall not exceed the following schedule:

"(1) As to motor vehicles:

"Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made—seven dollars ($7) per one hundred dollars ($100) per year.

"Class 2. Any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two (2) years prior to the year in which the

sale is made—nine dollars ($9) per one hundred dollars ($100) per year.

"Class 3. Any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than two (2) years prior to the year in which the sale is made—eleven dollars ($11) per one hundred dollars ($100) per year.

"(2) As to services and goods other than motor vehicles: (i) On so much of the principal balance as does not exceed three hundred dollars ($300), eleven dollars ($11), per one hundred dollars ($100) per year; (ii) if the principal balance exceeds three hundred dollars ($300), but is less than one thousand dollars ($1,000), nine dollars ($9) per one hundred dollars ($100) per year on that portion over three hundred dollars ($300); (iii) if the principal balance exceeds one thousand dollars ($1,000), seven dollars ($7) per one hundred dollars ($100) per year on that portion over one thousand dollars ($1,000).

Computation.

"(b) Such finance charge shall be computed on the principal balance as determined under section 7(f) [74-607(f)] of this act on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total time balance therefore is required to be paid in installments. A minimumfinance charge of twenty dollars ($20) may be charged on any retail installment transaction.

Minimum.

Permitted yield.

"(c) When a retail installment contract provides for payment, other than in equal successive monthly installmants, the finance charge may be at a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (a) and (b) hereof, having due regard for the schedule of payments in the contract.

(Matter deleted)."

Amending clause.

Section 11-153. Section 79-1905 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Contents and terms—refunding bonds issued by municipality.

"79-1905. **Terms of refunding bonds.** The refunding bonds may be issued in one or more series, may bear such

date or dates, may mature at such time or times not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, nor in any event exceeding forty years from their respective dates, may bear interest at such rate or rates not exceeding the maximum rate of interest borne by the notes, bonds, or other obligations refinanced thereby, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without a premium, may be declared or become due before the maturity date therof, may provide for the replacement of mutilated, destroyed, stolen, or lost bonds, may be authenticated in such manner and upon compliance with such conditions, and may contain such other terms and covenants, as may be provided by resolution or resolutions of the governing body of the municipality. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall at all times be, and shall be treated as, *fully* negotiable (matter deleted) *within the meaning of and for the purposes of the Uniform Commercial Code—Investment Securities.*"

Bonds shall be negotiable.

Amending clause.

Section 11-154. Section 88-152 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Crime to issue duplicate negotiable document without marking.

"88-152. **Penalty for warehouseman to issue duplicate negotiable receipt when original is outstanding without marking the same 'duplicate.'** A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word 'duplicate,' except in the case of a lost, *stolen* or destroyed receipt after proceedings as provided for in section (matter deleted) *7-601 of the Uniform Commercial Code,* shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars or by both."

Penalties.

Amending clause.

Section 11-155. Section 88-154 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Crime to deliver goods without obtaining negotiable warehouse receipt.

"88-154. **Penalty for delivering goods against which negotiable receipt is outstanding without obtaining possession of same.** A warehouseman, or any officer, agent, or servant of a warehouseman who delivers good out of the possession of such warehouseman, knowing that a negotiable receipt, the negotiation of which would transfer the right to the possession of such good (matter deleted) *is* outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except (matter deleted) *where the receipt has been lost, stolen or destroyed or the goods have been lawfully sold or disposed of to satisfy a warehouseman's lien been lost, stolen or destroyed or the goods have been law- or because of their perishable or hazardous nature,* be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars or by both."

Penalties.

Amending clause.

Section 11-156. Subsection (2) of section 89-109 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Required statement on face of bonds—validity of signatures.

"(2) All bonds issued under this act shall contain a statement on their face that the state shall not be obligated to pay the same or the interest thereon except from the special fund hereinafter set forth. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until such delivery. All such bonds shall be (matter deleted) *fully* negotiable (matter deleted), *as provided by the Uniform Commercial Code—Investment Securities.* Such bonds shall not constitute or be a debt, liability or obligation of the state, and shall be secured only by the revenues of such works and the funds received from the sale or disposal of water and from the operation, lease, sale or other disposition of the works, property and facilities to be acquired out of the proceeds of such bonds."

Bonds shall be negotiable.

Limitations.

Amending clause.

Section 11-157. Section 93-2802 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

"93-2802. **Assignment of thing in action not to prejudice defense.** In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any set-off or other defense existing at the time of, or before, notice of the assignment; but this section (matter deleted) *shall apply* (matter deleted) *only to the extent not otherwise provided for in the Uniform Commercial Code.*"

Assignment of thing in action shall not prejudice defense.

Amending clause.

Section 11-158. Section 93-3403 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Counterclaim subject to rules.

"93-3403. **Counterclaim—rules thereof.** "*A* (matter deleted) counterclaim (matter deleted) *on a contract* is subject to the following rules:

Assignment.

"1. *Except as otherwise provided by the Uniform Commercial Codes* If the action is founded upon a contract, which has been assigned by the party thereto, (matter deleted) a demand existing against the party thereto, or an assignee of the contract, at the time of the assignment thereof, and belonging to the defendant, in good faith, before notice of the assignment, must be allowed as a counterclaim, to the amount of the plaintiff's demand, if it might have been so allowed against the party, or the assignee, while the contract belonged to him.

(Matter deleted.)

Demand—plaintiff as trustee.

"2. If the plaintiff is a trustee for another, or if the action is in the name of the plaintiff, who has no actual interest in the contract upon which it is founded, a demand against the plaintiff shall not be allowed as a counterclaim; but so much of a demand existing against the person whom he represents, or for whose benefit the action is brought, as will satisfy the plaintiff's demand, must be allowed as a counterclaim, if it might have been so allowed in an action brought by the person beneficially interested."

Amending clause.

Section 11-159. Section 93-4301 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Plaintiff's right to attachment.

"93-4301. **When attachment may issue.** The plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay such judgment, as in this chapter provided, as follows:

"In an action upon a contract, express or implied, for the direct payment of money, where the contract is not secured by any mortgage or lien upon real (matter deleted) property, (matter deleted)or, if originally secured, such security has, without any act of the plaintiff, or the person to whom the security was given, becomes valueless, and in an action based upon a statutory stockholders' liability."

Amending clause.

Section 11-160. Section 93-4302 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Duty of clerk to issue writ—Affidavit on attachment.

"93-4302. **Affidavit—what to contain.** The clerk of the court must issue the writ of attachment, upon receiving affidavit by or on behalf of the plaintiff, showing:

"1. That such defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal counterclaims) upon a contract, express or implied, for the direct payment of money, and that the payment of the same has not been secured by any mortgage or lien upon real (matter deleted) property, (matter deleted) or, if originally so secured, that such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless; and

"2. That the attachment is not sought, and the action is not prosecuted, to hinder, delay, or defraud any creditor of the defendant."

Amending clause.

Section 11-161. Subdivision 4 of section 93-4307 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Investment securities subject to attachment, execution.

"4. *Investment securities as defined in the Uniform Commercial Code may be attached or levied upon only by seizure by the officer making the attachment or levy; provided, that such a security which has been surrendered to the issuer may be attached or levied upon by leaving with the president, or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the security of the defendant is attached in pursuance of such writ.* Stocks or shares, or interest in stocks or shares, of any corporation or company, *other than such investment securities,* (matter deleted) *may* be attached *either by seizure or* by leaving with the president, or other head of the same, or the

secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ."

Amending Clause.

Section 11-162. Section 93-4338 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Attachment proceedings—personal property subject to security interest.

"93-4338. **Attachment of personal property subject to a security interest.** Personal property (matter deleted) *subject to a security interest* may be taken on atachment or execution issued at the suit of a creditor of the (matter deleted) *debtor under the security agreement;* but before the property is so taken, the officer *levying the writ* must pay or tender to the (matter deleted) *secured party* the amount of the (matter deleted) *security agreement* debt and interest, or must deposit (matter deleted) *the same* with the county treasurer of the county in which the (matter deleted) *financing statement covering the security agreement* is filed, *if such statement is filed with a county clerk and recorder, or if such statement is filed with another filing officer pursuant to law, then with such other filing officer,* payable to the order of the (matter deleted) *secured party;* and when the property then taken is sold under process, the officer *levying the writ* must apply the proceeds of the sale (matter deleted) *as follows:*

Application—proceeds of sale.

"1. *To the repayment of the sum paid to the secured party, with interest from the date of such payment; and,*

"2. *The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.*

Affidavit of secured party.

"The secured party under any security agreement of record shall, upon fifteen days' notice in writing served upon him in person by any creditor of the debtor seeking to satisfy a judment or demand of such creditor against the debtor, be required to make and file in the office of the county clerk and recorder or other filing officer with whom the financing statement covering the security agreement is filed, an affidavit showing the amount of the indebtedness then actually due and owing to the secured party, and such affidavit shall state the amount of the original obligation for which the security agreement was given as security, and all additional advancement of money or property on the principal obligation since the date of the execution of the security agreement, and all payments

of whatsoever kind, whether on principal or interest, made by the debtor to the date of the execution of such affidavit by the secured party, and showing the balance then remaining due and unpaid to the secured party. If within fifteen days from the service of any such demand in writing on the secured party by any creditor of the debtor the secured party shall fail, refuse, or neglect to file the affidavit herein required, the security agreement shall be of no force or effect as against such creditor upon the seizure of any such personal property on attachment or execution. In the event the amount shown to be due is paid to the county treasurer, or to a filing officer as aforesaid, or to the secured party, in satisfaction of the security agreement by any attaching or execution creditor against the debtor, the secured party shall be required to surrender to the county treasurer or such filing officer the security agreement and any note or other evidence of indebtedness secured thereby, which said security agreement or other evidence of indebtedness shall be delivered by the secured party, county treasurer, or filing officer to the attaching or execution creditor. In the event the property is sold under attachment or execution, such attaching creditor shall be required to deliver to the debtor the security agreement and any note or other evidence of indebtedness secured thereby obtained from the secured party when the property is sold for the amount of the indebtedness under the security agreement, or an amount in excess thereof."

Effect—failure to file on written demand.

Payment—duty to surrender documents.

Adenming clause.

Section 11-163. Section 93-4344 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Possession of livestock under mortgage—filing notice.

"93-4344. **Possession under a mortgage—how acquired.** In all cases where it is necessary, under the laws of this state, for a party to any mortgage, assignment, bill of sale, or other contract, between the first day of November and the next succeeding fifteenth day of May, to take possesion of any such cattle or horses in order to preserve his rights under any such mortgage, assignment, bill of sale, or other contract, it is sufficient for such party to file a copy of the instrument under which he claims, with a notice of such claim appended thereto, with the (matter deleted) *general recorder of marks and brands* within five days after it becomes necessary for him to so take custody and possession of the same."

Amending clause.

Section 11-164. Section 93-4346 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Duty of County Clerk to record brands.

"93-4346. **Duty of county clerk and recorder of marks and brands to record papers.** It is the duty of the county clerk *and of the general recorder of marks and brands* to file all papers deposited with (matter deleted) *them* for that purpose, and required to be filed under the provisions of the three preceding sections, and preserve the same as other records of (matter deleted) *their offices* are preserved, and furnish to persons making inquiry about such files all necessary information concerning the same."

Amending clause.

Section 11-165. Section 93-5811 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Execution against one partner.

"93-5811. **Execution against one of a partnership.** If execution is levied upon the interest of one or more parties in the goods and property of a partnership, the same proceedings shall be had as in attachments, provided in sections 93-4336 and 93-4337. (Matter deleted.)"

Amending clause.

Section 11-166. Section 93-6001 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Proceedings in foreclosure suits.

"93-6001. **Proceedings in foreclosure suits.** There is but one action for the recovery of debt, or the enforcement of any right secured by mortgage upon real estate (matter deleted), which action must be in accordance with the provisions of this chapter. In such action the court may, by its judgment, direct a sale of the encumbered property (or so much thereof as may be necessary), and the application of the proceeds of the sale, and the payment of the costs of the court and the expenses of the sale, and the amount due the plaintiff; and if it appear from the sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants personally liable for the debt, and it becomes a lien upon the real estate of such judgment debtor, as in other cases on which execution may be issued. No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, need be made a party to such action; and the judgment therein rendered,

and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action."

Amending clause.

Section 11-167. Section 93-6004 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Power of sale in real estate mortgage—remedies.

"93-6004. **Power of sale.** When a *real estate* mortgage confers a power of sale, either upon the mortgagee or any other person, to be executed after a breach of the obligation for which the mortgage is a security, either an action may be maintained under this chapter to foreclose, or proceedings may be had under the provisions of the mortgage."

Amending clause.

Section 11-168. Title 93, chapter 60, of the Revised Codes of Montana, 1947, "Foreclosure of Mortgages, etc." is hereby amended by incorporating therein a new section 93-6010, as follows:

Application of law.

"93-6010. **Instruments—negotiability and remedies.** Nothing in this chapter shall be deemed to affect the negotiability of an instrument, and nothing in this chapter shall be deemed to limit remedies otherwise available to the purchaser of a promissory note secured by a mortgage unless such purchaser at the time of purchase had notice that the note was so secured."

Amending clause.

Section 11-169. Section 93-8613 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Actions to foreclose—court must allow attorney's fee.

"93-8613. **Counsel fees on foreclosure.** In an action to foreclose a mortgage *of real property,* or (matter deleted) *a security interest in personal property,* the court must allow as a part of the costs a reasonable attorney's fee, which shall be fixed by the court, any stipulation in the (matter deleted) *instrument* or any agreement between the parties to the contrary notwithstanding."

Amending clause.

Section 11-170. Section 93-401-22 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Construction of writings.

"93-401-22. **Writings—how construed.** A written notice, as well as every other writing, is to be construed according to the ordinary acceptation of its terms. Thus, a notice to the drawers or indorsers of a (matter deleted) *draft* or promissory note, that it has been protested for want of acceptance or payment must be held to import

that (matter deleted) *any necessary presentment* for acceptance or payment (matter deleted) *has been made, that the instrument has been dishonored,* and that the holder looks for payment to the person to whom *the* notice is given."

Amending clause.

Section 11-171. Section 93-1401-7 of the Revised Codes of Montana, 1947, is hereby amended to read as follows:

Statute of frauds—requirements of writing.

"93-1401-7. **Agreement not in writing—when invalid.** In the following cases the agreement is invalid, unless the same or some note or memorandum thereof be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

"1. An agreement that by its terms is not to be performed within a year from the making thereof.

"2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section 30-105.

"3. An agreement made upon consideration of marriage, other than a mutual promise to marry.

(Matter deleted.)

"4. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

Application of law.

"This section shall not apply to agreements subject to the Uniform Commercial Code."

CHAPTER NO. 265

An Act Providing for the Allowance of an Increase in Average Number Belonging for Budget Purposes Where a School District or County High School Anticipates an Unusual Increase in Enrollment in the En-